

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 June 2009

Public Authority: Ferryhill Town Council
Address: Chapel Terrace
Ferryhill
County Durham
DL17 8JL

Summary

The Complainant requested information including the specific salary and overtime pay of the executive officer and the senior finance officer of Ferryhill Town Council. The council provided some information to the complainant but refused to provide the exact details of the salaries and a breakdown of the overtime payments on an individual basis because it argued that section 40 of the Act applied (personal data). The complainant subsequently withdrew his request for information about the senior finance officer.

The Commissioner's decision is that section 40(2) of the Act applied by virtue of section 40(3)(a)(i) to the specific details of the executive officer's salary and overtime payments. The council did not therefore breach the Act in applying the exemption to the specific details requested. However the Commissioner has also decided that the council should have provided the complainant with details of the executive officers salary band and the spine point profile for that band. He has also decided that a disclosure of aggregated overtime figures by the council to the complainant was in accordance with the requirements of the Act. The Commissioner has also decided that the council breached sections 10(1), 17(1) and 17(1)(b) of the Act in that it did not confirm that it held information relevant to the request or issue a refusal notice within 20 working days or fully cite the sub-section relied on.

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 10 November 2007 the complainant requested from the council:
 - “1. The annual salary, expenses, job description and all term and conditions of employment of the Town Council’s executive officer.
 2. The annual salary, expenses, job description and all term and conditions of employment of the Town Council’s Senior Finance and Administration Officer.”
3. The council responded on 12 November 2007. Its response did not directly respond to the questions raised in the request, but questioned the method with which the complainant had sought to obtain the information and suggested that other methods may be more appropriate given the complainant's role as a councillor at the council.
4. On 14 December 2007 the complainant wrote again to the council stating that the terms of his request stood, that he was still waiting for a response from the council, and that a response was now overdue as regards the time limits for responses to freedom of information requests stipulated in section 10 of the Act. The complainant therefore requested that the council review its position and respond to the request.
5. In a letter dated 12 December 2007 but presumably received by the complainant later than 14 December 2007 the council provided a copy of the contract of employment of the executive officer and of the senior finance officer, together with the executive officers job specification and job description. The letter however stated that salary details were being withheld as they were personal data protected under the Data Protection Act 1998 (the ‘DPA’), and were therefore exempt under section 40 of the Act. It did not specify which particular subsection of section 40 it was relying upon however.
6. On 3 January 2008 the complainant wrote back the council. He stated that he was not happy with the decision to withhold the salary information and that the information was not, in his view, personal data.
7. On 18 January 2008 the complainant again wrote to the council stating specifically that he wished the council to review its decision not to supply the information to him.
8. On 7 March 2008 the council responded to that request, stating that after carrying out a review, the information remained exempt under the Act for the same reasons.
9. Additionally, on 7 November 2008, prior to his complaint being allocated for investigation by the Commissioner, the complainant again wrote to the Commissioner requesting that an additional question be considered as part of his

request. He provided documents to this effect. On 24 July 2008 the complainant had also requested from the council details of

“any overtime payments made to the executive officer or the Senior finance officer of the council.”

10. The council responded on 12 August 2008 refusing to provide specific information as section 40 applied. It did however state “the total amount of overtime is included within the budget of which you already have a copy and is broken down in respect of external and internal staff”.
11. The Commissioner does not know whether the complainant asked for a review of this decision, however given the long history of this case, and given the discussion and correspondence he has had with the council since this date he is aware that the council still wishes to rely upon this exemption in respect of this information.

The Investigation

Scope of the case

12. On 12 March 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the information which he requested should have been disclosed to him. The complainant wrote again on 7 November 2008 as stipulated in paragraph 9 above extending his complaint to include the second request which he had made. The Commissioner also notes that the complainant withdrew his request for information on the senior finance officer in a letter to the Commissioner dated 15 February 2009. Therefore his decision in this notice only relates to the request for information on the executive officer.

Chronology

13. The Commissioner telephoned the council on 26 January 2009. The council explained that it had already provided information to the complainant in the form of a list of civil service salary bands together with figures on the aggregated overtime payment made to all council staff. It was not however prepared to disclose specific figures for either of the individuals as this was the personal data of the individuals involved. It therefore applied Section 40 of the Act.
14. The council rang the Commissioner on 27 January 2009 reiterating that in its view the information was personal data and that it was exempt under section 40 of the Act.
15. The Commissioner wrote to the complainant on 28 January 2009 stating that specific information on the salaries and overtime payments was likely to be

- exempt from disclosure and asking him whether he wished to withdraw his request.
16. The complainant rang the Commissioner and discussed the case on the telephone. He asked for time to prepare arguments in support of his position, and this was agreed.
 17. The complainant wrote to the Commissioner on 15 February 2009 providing further arguments in support of his view that the information should be disclosed. He also stated that he intended to appeal any decision by the Commissioner which did not allow him access to the specific information that he had requested. The complainant however stated that after considering the arguments put to him by the Commissioner he had decided to withdraw his request for information about the senior finance officer.
 18. On 9 March 2009 the Commissioner telephoned the council and explained that the complainant had now withdrawn his complaint regarding information about the senior finance officer.
 19. The Commissioner further stated to the council that the complainant had clarified that the council had not provided salary figures when it had disclosed salary bands to him, but that it had only provided details of the grades. The Commissioner therefore asked the council to clarify if this was the case. The council confirmed that this was true, but stated in mitigation that the council understood that the complainant would be able to ascertain figures from the salary bands given that he is a councillor at the council. The council confirmed however that it would provide figures of the salary bands if requested to. The Commissioner stated that in his view he considered that this may be a case where more specific figures of the executive officers salary needed to be disclosed. He suggested that a salary figure rounded to the nearest £5000 may need to be disclosed. The council confirmed that it would disclose this if requested to do so by the Commissioner.
 20. However the council stated that it would not disclose specific overtime figures relating to the executive officer to the complainant. It said that the aggregated figures it had provided were separated into internal and external staff and that the aggregated figure for the internal staff related to 5 individuals only. It argued that separating that figure further would disclose specific personal data about the executive officer.

Findings of fact

21. The Commissioner has established that in response to the complainant's request the council provided him with a copy of the overall overtime budget for the council, split between overtime paid to external staff and overtime paid to internal, office staff.

22. The council also confirmed that it has disclosed the grade of the executive officer to the complainant together with information showing the salary spine points profile for that grade.

Analysis

Procedural matters

23. Section 10 (1) of the Act requires that a public authority must comply with its obligations under section 1(1) of the Act promptly, and in any event not later than the twentieth working day following the date of the receipt of the request.
24. The complainant made his first request for information on 10 November 2007 but did not receive a refusal notice until 12 December 2007. The council therefore breached section 10(1) of the Act by failing to confirm it held information relevant to the request within the 20 working day period provided in section 10 of the Act.
25. In its refusal notice of 12 December 2007 the council did not provide the complainant with the specific subsections of section 40 which it was relying upon in order to exempt the information. It did however indicate that section 40 was applicable.
26. Section 17(1)(b) places an obligation upon the public authority that its refusal notice '*specifies the exemption in question*'. The Commissioner's view is that the public authority is thereby required to refer to the specific part(s) of the relevant exemption(s). In this case the council referred generally to section 40 without specifying which sub-section was being applied (ie section 40(2) by virtue of section 40(3)(a)(i)).
27. The Commissioner has therefore concluded that it breached section 17(1)(b) of the Act in failing to supply a notice compliant with the requirements of that section within 20 working days. It also breached section 17(1) by failing to issue a refusal notice within 20 working days.

Exemption

Section 40

28. Section 40(2) of the Act exempts personal data from disclosure where, in the case of third parties, that disclosure would breach one of the eight data protection principles of the DPA. The first question to consider is therefore whether the information is personal data.
29. Section 1 of the DPA defines personal data as data which relate to a living individual who can be identified:
 - from those data, or

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

30. The information which has been requested is the salary of, and overtime payments made to the executive officer. The Commissioner is therefore satisfied that the information is the personal data of the executive officer of Ferryhill Town Council. The next question to consider is therefore whether a disclosure of the information would breach any of the data protection principles.

The Data Protection Principles

31. Personal data must be processed in line with the requirements of the DPA. The DPA has eight data protection principles which govern the processing of personal data. Section 40(3)(a)(i) of the Act exempts the personal data of individuals who are not the requestor of the information where its disclosure would breach any of these principles.
32. The Commissioner has produced guidance on the disclosure of employees salaries entitled "When should salaries be disclosed" which he has followed when making a decision in this complaint.
33. The Commissioner considers that the data protection principle most likely to be breached by a disclosure of the information in this case is the first data protection principle.

The First Data Protection Principle

34. The first data protection principle requires that personal information is processed "fairly" and "lawfully", and that one of the conditions in schedule 2 of the DPA applies. He has firstly considered whether a disclosure of the information would be fair for the purposes of the Act.

Would disclosure be "fair"

35. The fairness requirement means that generally, (but not always) individuals would have an expectation that their information would be processed in a particular way, either because it would be reasonably obvious that that would be the case, or because the data processor (i.e. in this case the council) told the individual that their information would be processed in that way at the time that the information was obtained. Alternatively another reason will apply which will make that disclosure fair.
36. The Commissioner considers that individuals who are paid from the public purse should have an expectation that some details of their salary may be disclosed in response to a request. However, salary information also relates to personal financial circumstances and this deserves some protection. The Commissioner must consider each case on its own merits. His view is that in some circumstances it may be fair for the exact details of salaries to be disclosed, for instance where the individual was told that that would occur when first taking up his position at the council.

37. There is no suggestion that the council specifically told the executive officer that specific details about his salary would be disclosed in response to a request. The Commissioner has therefore considered whether it would fall within the reasonable expectations of the executive officer that specific details about his salary and his overtime pay would be disclosed in response to a request under the Act.

Reasonable expectations

38. The executive officer is the most senior non-elected role at the council. He is responsible for implementing the decisions of the council and the day to day running of council business. As the most senior person at the council the Commissioner assumes he receives the largest salary of all of the council's staff. The executive officer must therefore expect that his position will be more open to scrutiny than other officers at the council, and that some details of his salary may need to be disclosed to allow the proper scrutiny of how the council spends public money and whether the position is paid appropriately for the work which the executive officer carries out.
39. The Commissioner has previously stated that in his view salary scales should usually be published as a matter of course. This also falls in line with many public authorities which provide pay band details for their senior staff within their annual reports/published annual accounts. The executive officer should therefore consider that details about his grade, and the pay bands associated with that grade should be disclosed. It is noted that in response to this request the council provided details of the executive officer's grade with the belief that the councillor would be able to attach specific salary bands to those grades.
40. However the complainant requested specific details of the executive officer's salary, together with details of the overtime payments which have been paid to him specifically. The Commissioner's view is that a disclosure of specific salary and overtime details would be far more intrusive into the financial situation of the executive officer than the disclosure of the salary bands or general salary information. Therefore it would have been far less likely that he would have expected that exact figures on his salary would be disclosed in response to a FOI request. However this should still be balanced against the fact that the executive officer is the most senior role in a public office and that his salary is paid through public funds.
41. In *House of Commons v ICO & Norman Baker MP* (EA/2006/0015 and 0016) the Information Tribunal found that where information is about officials acting in their public capacity then there should be a clearer expectation by those individuals that their actions will be subject to a greater level of scrutiny than would otherwise be the case. However it drew a distinction between information on the public lives of public servants and their private lives.
42. In the Information Tribunal's decision, the House of Commons argued that a disclosure of information on the travel arrangements of Members of Parliament would inevitably reflect personal and family circumstances to some degree. The

Tribunal found this to be correct, but found that the above principle "...still applies even where a few aspects of their private lives are intertwined with their public lives but where the vast majority of processing of personal data relates to a data subject's public life." (at para 78).

43. The Commissioner is satisfied that a disclosure of the exact pay details would be more intrusive than simple pay bands relating more generally to the position of executive officer because it would give a very clear indicator of the executive officers financial standing to any person reading that information. He is also satisfied that although the executive officer should have had some expectation that information relating to the post would be disclosed if requested, that expectation would not have extended to specific information relating to his salary and his overtime pay.
44. He is further satisfied that information about overtime payments which have been made to him would also be intrusive, providing an overview of the hours the executive officer works in addition to his normal working hours, and providing a good indicator of his work life balance.
45. The Commissioner has therefore gone on to consider whether any schedule 2 conditions apply, and how that might affect the arguments expressed above.

Schedule 2 condition

46. Schedule 2 of the DPA provides a list of reasons for processing personal data. Under the first data protection principle at least one of these 'reasons' must be applicable before personal data can be processed. Furthermore, the application of one of the schedule 2 criteria can often inform the view as to whether a disclosure would be fair or not. An applicable reason from schedule 2 will not however automatically make the processing fair.
47. The Commissioner considers that the most applicable condition in this case is likely to be schedule 2, paragraph 6(1) which allows the processing personal data where,

"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."
48. The full text of schedule 2 of the DPA can be found in the Legal Annex at the end of this Notice.
49. In considering the application of this schedule 2 condition the Commissioner has adopted the approach of the Information Tribunal in *The Corporate Officer of the House of Commons v the Information Commissioner* (EA/2007/0060, 0061, 0062, 0063, 0122, 0123, 0131.) The Tribunal noted that this condition involved a balance of interests broadly comparable with the public interest test for qualified exemptions under the Act, but found that in order for this condition to be satisfied,

the legitimate interests of those to whom the data would be disclosed (i.e. the general public) had to outweigh the rights, freedoms and legitimate interests of the data subject.

Balancing the legitimate interests

50. The Commissioner must therefore carry out a balancing exercise to decide whether the legitimate interests of the general public in knowing the salary and overtime levels of the executive officer at the council is unwarranted by reason of prejudice to his rights and freedoms or the legitimate interests of the executive officer of the council.
51. Following the Tribunal decision in Corporate Officer of the House of Commons v Information Commissioner and Leapman, Brooke and Thomas (EA/2007/0060 etc; 26 February 2008) (upheld on appeal by the High Court), the Commissioner has considered the decision on condition 6 as a three-part test:
1. there must be a legitimate public interest in disclosure;
 2. the disclosure must be necessary to meet that public interest; and
 3. the disclosure must not cause unwarranted harm to the interests of the individual.

1. The Legitimate Public Interest in Disclosure

52. The Commissioner has therefore considered whether there is a case for the exact details of the executive officer's salary to be disclosed. His view is that the legitimate interest of the public in this information being disclosed is to provide assurance that salary levels and payments made to the executive officer are appropriate. There is a strong public interest in allowing the electorate to be able to scrutinise whether the council's expenditure of its funds is financially sound; that salary levels are not having an unwarranted detrimental effect on the services the council is able to provide or on the levels of tax which are levied to support it.
53. The complainant argues that information he has obtained on the salary level of the executive officer shows that it is excessively high for the post. He has made public statements that two thirds of the overall budget of the council is spent on the salaries of council staff. He further argues that community tax levels set by the council have risen above inflation over recent years and that this may partly be as a result of the council's increased spending on salaries. He also argues that other executive officers at other councils do not normally receive overtime pay as part of their contract. He argues that as this is unusual there is a legitimate interest in the public having access to information which demonstrates whether the salary and overtime payments paid to the executive officer in particular is appropriate.
54. On the counter side the Commissioner's view is that details of the specific salary or overtime payments of the executive officer would be information which would

impinge upon the private life of the executive officer. Exact salary and overtime details relate to him specifically rather than more generally to the post of executive officer and would give a clear indication of his financial standing as an individual. It is also noted that the executive officer is paid according to civil service rates. He has not therefore negotiated a private deal as regards his salary which might raise concerns that his salary levels are extraordinary compared to other civil servants.

2. Is disclosure necessary in order to meet that legitimate interest?

55. The Commissioner has therefore balanced the legitimate interests of the general public in being able to satisfy themselves that the salary and overtime payments made to the executive officer are appropriate against the legitimate interests of the executive officer not to have an unwarranted intrusion into details about his private life. He has considered whether it is necessary for the public to have access to the specific details of his salary in order to be able to scrutinise the appropriateness of payments made to him.
56. In the Commissioner's view, the salary range of the executive officer's role would provide a good overview of the salary payments which are being made. However given the seniority of the role, and the payments of overtime which he qualifies for, the Commissioner would generally consider that in order to get a clearer understanding of the council's expenditure of public money to the executive officer it should disclose the executive officers pay rounded to the nearest £5000. In this way the council is not disclosing specific details about payments made to the executive officer but the disclosure would provide an appropriate level of scrutiny on the levels of salary that the council has awarded. This would satisfy the legitimate interests of the public in knowing whether salary levels set by the council are appropriate.
57. The Commissioner does not therefore consider it necessary that exact details of the salary paid to the executive officer need to be disclosed in order to satisfy the legitimate interest in allowing the proper scrutiny of payments made to the executive officer by the council.
58. In response to the Commissioner's intervention the council recently provided the complainant with specific civil service salary bands for each grade of officer. The council also provided the complainant with specific spine point profile which the executive officer is currently at in the pay scale. The Commissioner understands that this provides more specific details about the executive officers salary than details of his grade alone.
59. However the Commissioner has considered the spine point profile and has established that the profile provides a band of £6075 between the bottom spine point and the top. The Commissioner notes that this does not establish what the executive officer actually receives to the nearest £5000 as stated above. However the Commissioner is satisfied that, because of the nature of the figures in the band, doing so in this case would in fact allow details of the executive officers exact salary to be calculated. Therefore the Commissioner does not consider that

the council needs to provide any further specific information as regards the executive officers salary levels to the complainant.

Overtime payments

60. As regards information on the specific overtime payments which have been made by the council the Commissioner is satisfied that information relating to overtime provides further personal information relating to the private life of the executive officer. He is further satisfied that a disclosure of overtime payments made specifically to the executive officer would be more intrusive than a disclosure of the salary levels alone. Disclosure would indicate the levels of overtime worked by the executive officer and would disclose clearer details of his work life balance. It would also be potentially misleading as the executive officer indicates that many hours of overtime he works are actually unpaid.
61. However the Commissioner must balance the rights and legitimate interests of the executive officer against the legitimate interests of the public to have access to information which would clarify whether the overtime payments made to the executive officer are appropriate.
62. The executive officer has suggested that his position demands that he works many hours in addition to his normal salaried hours. Council minutes and supposition in political newsletters imply that relatively high levels of payments have been made to the executive officer as a result of this, although this is denied by the council. The executive officer indicates that many hours of the overtime he works are actually unpaid. This public debate has naturally raised concerns about the overtime payments being made by the council, and as these were raised in part by statements made by the executive officer there is clearly a strong legitimate interest in the public being able to assure itself that excessive payments of overtime are not being paid to the executive officer.
63. The council states that it has provided the complainant with a copy of its overtime payments for all staff at the council in an aggregated form. It states that the figures it provided were separated into overtime paid to "outside staff" and overtime paid to Office staff. It states that the latter figure relates to only 5 people, one of whom is the executive officer.
64. The Commissioner suggested to the council that the executive officers overtime payments should be disclosed, once again rounded to the nearest £5000 as with his salary details. In response however the council stated that that would not be helpful in this instance because the overtime budget set for the council for the year was approximately £8000 and that that figure had not been exceeded or would only be slightly exceeded at the end of the financial year.
65. The Commissioner has considered this further. The legitimate interest in allowing public access to information on the specific overtime payments made to the executive officer is to allow them to assure themselves that those payments are appropriate. Given that the overall budget was approximately £8000 and that that figure had not, or would only marginally be exceeded, the Commissioner is satisfied that the public can assure themselves that the payments are appropriate

from the figures which have already been disclosed because the set budgetary levels are relatively low and because that figure has not been exceeded to any great degree over the course of the financial year. Furthermore the figures, as segregated between outside and office staff help to establish further whether the payments to the office staff, and hence the executive officer, are appropriate.

66. The Commissioner is therefore satisfied that the total overtime payment which has already been disclosed to the complainant is a suitable summary which serves to address the legitimate interests of the public in knowing that appropriate overtime payments are being paid. A further breakdown of that figure to give the specific overtime levels of the executive officer is unnecessary and would be an unwarranted intrusion into his personal circumstances.

Conclusion

67. The Commissioner is therefore satisfied that a disclosure of the specific figures requested by the complainant would be unfair, and would therefore breach the first data protection principle. His decision is therefore that the specific information requested by the complainant falls within the scope of section 40 of the Act. However the Commissioner has considered what, if any information would be fair to be disclosed, and whether a schedule 2 condition applies to allow that processing. His view is that the council's disclosure of salary and spine levels meets the legitimate interests of the public in understanding the council's expenditure on salary to the executive officer. He has also decided that a disclosure of the overall overtime worked by council staff, segregated into office and external staff is appropriate to meet that requirement. Any further level of disclosure is not "necessary" and would be unwarranted under the first data protection principle.
68. Section 40 of the Act is in this case an absolute exemption. Therefore the Commissioner has not undertaken an assessment of the public interest test in this case.

The Decision

69. 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 council correctly applied section 40(2) by virtue of section 40(3)(a)(i) to the specific details of the salary and overtime payments made to the executive officer.

70. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

The authority did not provide a response to the requestor's request of 10 November 2007 confirming that it held information relevant to

the request within 20 working days. This is a breach of section 10(1) of the Act.

The authority did not provide a response specifically stating to the requestor which subsection of section 40 it was relying upon in order to exempt the information from disclosure. This is a breach of section 17(1)(b) of the Act.

The authority did not provide a refusal notice to the complainants request within 20 working days it therefore breached section 17(1) of the Act.

Steps Required

71. The Commissioner requires no steps to be taken.

Right of Appeal

72. 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.
Website: www.informationtribunal.gov.uk

73. 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.

74. 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 8th day of June 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act.

Personal information.

40. - (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 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 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 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

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.

2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

4 Personal data shall be accurate and, where necessary, kept up to date.

5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

6 Personal data shall be processed in accordance with the rights of data subjects under this Act.

7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

SCHEDULE 2

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

1 The data subject has given his consent to the processing.

2 The processing is necessary—

- (a) for the performance of a contract to which the data subject is a party, or
- (b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3 The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4 The processing is necessary in order to protect the vital interests of the data subject.

5 The processing is necessary—

- (a) for the administration of justice,
- (b) for the exercise of any functions conferred on any person by or under any enactment,
- (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
- (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

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.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied