

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 June 2011

Public Authority: Welsh Assembly Government
Address: Cathays Park
Cardiff
CF10 3NQ

Summary

The complainant requested copies of correspondence to, from or on behalf an Assembly Member concerning Powys Fadog and Assembly negotiations relating to the River Lodge Hotel, Llangollen. The Welsh Assembly Government ("Welsh Government") disclosed some information but withheld other information under sections 31(2)(b), 40(2) and 43(2). During the Commissioner's investigation the Welsh Government disclosed additional information but maintained its reliance on section 40(2) in relation to some information. The Commissioner has investigated and concluded that the Welsh Government correctly applied Section 40(2) to the remaining withheld information. The Commissioner identified a number of procedural shortcomings in the way the Welsh Government handled the complainant's request 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.

Background

2. The request in this case relates to a property known as the River Lodge Hotel, which was purchased by the Welsh Government in March 2007. The Welsh Government subsequently entered into negotiations with

Powys Fadog, a local social enterprise with a view to developing the property to secure an acceptable community use for the building.

3. In June 2009 the Welsh Government and Powys Fadog entered into an Agreement for Lease for the property. This lease was subject to a number of conditions including that Powys Fadog undertake remedial and improvement works to bring the property back into a good state of repair. A pre-condition to the lease being granted was that Powys Fadog was required to demonstrate that it had secured funding to cover the cost of remedial works.
4. The Welsh Government has conducted a number of internal investigations into the River Lodge project. The Welsh Government has also undertaken an options appraisal assessment in order to consider the alternative options for future use of the site.

The Request

5. On 24 March 2010 the complainant contacted the Welsh Government and requested:

"Any emails or paperwork either to or from, or on behalf of, Karen Sinclair AM concerning Powys Fadog and Assembly negotiations with regard to the River Lodge Hotel, Mill Street, Llangollen. I would like to request any information/communication that has taken place since January 2009 to present".

6. Various exchanges took place between the complainant and the Welsh Government in relation to the delay in responding to the request. The Welsh Government finally responded on 14 June 2010 and provided information relevant to the request, but redacted parts of the documents under sections 40(2) and 31(2)(b) of the Act.
7. On 22 June 2010, the complainant requested an internal review of the Welsh Government's decision not to release the redacted parts of the information provided. She specifically disputed the Welsh Government's application of sections 31(2)(b) and 40(2) of the Act.
8. The complainant contacted the Welsh Government to chase a response on 17 and 31 July 2010. On 21 July 2010 the complainant contacted the Commissioner to complain about the delays she had experienced in obtaining the Welsh Government's internal review outcome.
9. The Commissioner wrote to the Welsh Government on 7 September 2010 recommending that it provide the outcome of its internal review within 20 working days.

10. On 14 October 2010 the Welsh Government provided the outcome of its internal review. It disclosed some additional information but upheld its decision that the remaining information should be withheld under sections 40(2), 43(2), and 31(2)(b) of the Act. It also confirmed that the documents released either in full or in part represented all the information which the Welsh Government held relevant to the request.

The Investigation

Scope of the case

11. On 23 November 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - Whether the information which had been withheld by the Welsh Government should be disclosed
 - The delays experienced with the initial response to her request and the internal review response.
12. On 5 April 2011 the complainant wrote to the Commissioner to advise that she believed the Welsh Government held additional information relevant to her request. She referred specifically to a letter which she understood Karen Sinclair had written to the Wales Audit Office ('the WAO') on 21 January 2010 regarding Powys Fadog and the River Lodge Hotel. The Commissioner therefore expanded the scope of his investigation to ascertain whether the Welsh Government held a copy of this letter.
13. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - The Welsh Government withdrew its reliance on sections 31(2)(b) and 43 and disclosed the information it had originally withheld under these exemptions, apart from information which was also considered exempt under section 40(2).
14. The remaining withheld information relevant to the request comprises of sections redacted under section 40(2) contained within the following documents:
 - (i) Document A - letter dated 21 July 2009 from Karen Sinclair to Rhodri Morgan.

- (ii) Document B – internal briefing about the River Lodge project attached to Document A.
- (iii) Document C – letter dated 24 August 2009 from Rhodri Morgan to Karen Sinclair.
- (iv) Document D – letter dated 21 September 2009 from Karen Sinclair to Rhodri Morgan.

Chronology

15. On 13 October 2010, the Commissioner wrote to the Welsh Government to confirm that the complaint had been deemed eligible for formal consideration and requested copies of the withheld information.
16. The Welsh Government responded to the Commissioner on 22 October 2010 providing the withheld information annotated to show which exemptions were considered applicable.
17. The Commissioner wrote to the Welsh Government on 30 November 2010 and requested clarification of the reasoning behind its application of sections 31, 40 and 43. The Commissioner also asked the Welsh Government to consider whether any additional information could now be disclosed in view of the passage of time since the original request, even if its position remained that at the time of the request, the information was considered exempt.
18. The Welsh Government responded on 21 January 2011. It confirmed that, with the passage of time, and developments which had taken place, it was no longer seeking to rely on section 31(2)(b). As a result, it disclosed information originally withheld under section 31(2)(b), unless any other exemption was considered applicable to the information. It maintained its reliance on sections 40(2) and 43(2) and provided further arguments to support its application of these exemptions.
19. The Commissioner met with officers at the Welsh Government's offices on 10 February. Due to the fact that information relevant to the request had been disclosed on a number of occasions, during this visit, the Commissioner confirmed exactly what information the Welsh Government maintained was exempt from disclosure, and what had been disclosed. The Commissioner also discussed the information which had been withheld under section 43 and asked the Welsh Government to reconsider its position in relation to its application of section 43.
20. The Welsh Government contacted the Commissioner on 21 February 2011 and advised that, following further reconsideration of its application of section 43, it was no longer seeking to rely on this

exemption. The Welsh Government disclosed the information it had withheld under section 43.

21. On 24 February 2011, the Commissioner wrote to the complainant to try to agree an informal resolution of her complaint. The Commissioner set out his preliminary view that the Welsh Government had correctly applied section 40(2) to the remaining withheld information.
22. The complainant responded to the Commissioner on 5 April 2011 stating that she remained dissatisfied with the Welsh Government's application of section 40(2). She did not accept that the amount of information withheld could constitute personal information, and therefore covered by section 40. The complainant also stated that it had come to her attention that the Welsh Government may hold additional information relevant to her request.
23. The Commissioner contacted the complainant on 5 April 2011 confirming that he would proceed to draft a decision notice in relation to her complaint. He asked the complainant to provide any evidence to support her view that the Welsh Government held additional information.
24. The complainant responded to the Commissioner on 5 April 2011 advising that she was aware of a letter which Karen Sinclair had written to the WAO on 21 January 2010 regarding Powys Fadog and the River Lodge Hotel.
25. The Commissioner contacted the Welsh Government on 6 April 2011 to ascertain whether it held a copy of Karen Sinclair's letter of 21 January 2010 to the WAO. The Welsh Government responded on 8 April 2011.

Analysis

Is further recorded information held?

26. Section 1(1) of the Act creates a general right of access to information held by public authorities. Section 1(1) of the Act states:

'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.'

27. The test which the Commissioner applies in determining whether a public authority holds any requested information is the balance of probabilities. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

"...we must consider whether the IC's decision that the EA did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..." (paragraph 10) because

"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records" (paragraph 13).

28. When it is alleged that a public authority held more information, the Commissioner will consider whether this was the case on the balance of probabilities. In deciding where the balance lies, the Commissioner will consider any searches undertaken by the authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information was not held.
29. As stated in paragraph 12 of this notice, the complaint advised the Commissioner that she believed the Welsh Government held a letter which Karen Sinclair sent to the WAO on 21 January 2010 regarding the River Lodge and Powys Fadog.
30. In response to the Commissioner's enquiries in relation to this letter, the Welsh Government confirmed that it had made enquiries with staff in all departments who had any involvement in issues associated with the River Lodge project, including Internal Audit Services, the Department for Economy and Transport and the Office of the Permanent Secretary and no such letter had been located. As the letter itself was sent to a third party, ie the WAO, and not directly to the Welsh Government, its position is that it was never provided with a copy of the letter either by Karen Sinclair or by the WAO, and as such, the information is not held. The Welsh Government confirmed that the only information it held falling within the scope of the request had been disclosed either in full or in part.
31. Based on the above, the Commissioner is satisfied that on the balance of probabilities, no further information falling within the scope of the request is held.

Section 40

32. Section 40(2) of the Act provides an exemption for information that is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied. In this particular case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles, as set out in Schedule 1 to the Data Protection Act 1998 ('the DPA').
33. The Welsh Government considers that the withheld information constitutes the personal data of officers who were involved in the River Lodge Hotel project, that disclosure would be unfair and would therefore breach the first data protection principle. The Commissioner agrees that the relevant principle here is the first principle; the requirement that any processing should be fair and lawful.
34. Due to the circumstances of this case and the content of the withheld information, the level of detail which the Commissioner can include in this Notice about the Welsh Government's submissions to support its position in respect of its application of this exemption and the Commissioner's consideration of those arguments is limited. This is because inclusion of any detailed analysis is likely to reveal the content of the withheld information itself. The Commissioner has therefore produced a confidential annex which sets out in detail his findings in relation to the application of the exemption. This annex will be provided to the Authority but not, for obvious reasons, to the complainant.

Is the information personal data?

35. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
36. In considering whether the information requested is "personal data", the Commissioner has also taken into account his own guidance on the issue¹. The two main elements of personal data are that the information

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

must “relate to” a living person, and that person must be identifiable. Information will “relate to” a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.

37. The withheld information in this case comprises; the name of an officer in the Welsh Government who was involved in the River Lodge project and details of their involvement in the scheme, and the name of an individual who produced a briefing note relating to the River Lodge project. The Welsh Government acknowledge that some parts of the withheld information, if read in isolation, may not constitute personal data. However, the Welsh Government believe that disclosure of parts of the withheld information could lead to identification of the individuals concerned.
38. The Commissioner accepts that a living individual can be identified from their name and is satisfied that the two names which have been redacted constitute personal data. In relation to details of the officer’s involvement in the River Lodge project, the Commissioner is satisfied that this information also constitutes the personal data of the individual as, he/she is clearly the focus of the withheld information. The Commissioner also accepts that, even if just the name of the officer was withheld, there is a reasonable prospect that he/she could be identified if the remaining information were to be disclosed.
39. The Commissioner is satisfied that living individuals can be identified from the withheld information and that the information relates to those individuals. The Commissioner therefore accepts that the information in the context of this request is personal data as defined by the DPA.

Would disclosure contravene any of the principles of the DPA?

40. Having concluded that the information falls within the definition of “personal data” the Commissioner has gone on to consider if disclosure of the information would breach the requirements of the first data protection principle. As stated in paragraph 33 above, the Welsh Government claimed that disclosure of the withheld information in this case would breach the first data protection principle.

The first data protection principle

41. The first data protection principle has two main components. They are as follows:
 - the requirement to process all personal data fairly and lawfully; and

- the requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.
42. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

Would disclosure of the information be fair?

43. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He has then balanced these against the general principles of accountability, transparency and legitimate public interest.
44. The Commissioner will consider the release of the two sets of withheld information separately, namely the information withheld from document B (the name of an individual who produced a briefing note relating to the River Lodge project), and the information withheld from documents A, C and D, (the name of an officer in the Welsh Government who was involved in the River Lodge project and details of their involvement in the scheme).

Document B

45. The information which has been withheld from document B, comprises the name of an individual who produced a briefing note for Ministers relating to the River Lodge project. The Welsh Government's position in relation to this information is that the officer no longer works at the Welsh Government and was not employed there at the time of the request. Further, the Welsh Government confirmed that the individual occupied a position which was junior to its senior management team. It confirmed that the officer did not have a public facing role, and was responsible for providing additional advice to a Minister from a political perspective. The Welsh Government is of the view that the officer would have had a reasonable expectation that his or her details would not be disclosed to the public at large and to do so would be unfair.
46. A data subject's expectations are likely in part to be shaped by generally accepted principles of everyday interaction and social norms, for example, privacy. It is accepted that every individual has the right to some degree of privacy and this right is so important that it is enshrined in Article 8 of the European Convention on Human Rights.

47. However, expectations are also shaped by a society where transparency and the Freedom of Information Act's presumption in favour of disclosure of information form part of its culture. This was recognised by the Tribunal in the case of *The Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP* (EA/2006/0015 & 0016) where it was said that:

"...The existence of the FOIA [Freedom of Information Act] in itself modifies the expectations that individuals can reasonably maintain in relation to the disclosure of information by public authorities, especially where the information relates to the performance of public duties or the expenditure of public money." (para. 43).

48. The Commissioner's Awareness Guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. Although the guidance acknowledges that there are no hard and fast rules it states that:

'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'

49. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (ie their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).
50. Whilst the Commissioner believes that senior staff should anticipate that such information is likely to be discloseable, he also believes that more junior staff who do not normally deal directly with the public would not presume to have this information released. The Commissioner believes that an employee who makes decisions which involve significant expenditure of public funds should expect greater scrutiny about their decisions than junior colleagues; senior officials are paid out of public funds commensurate with their level of responsibility. In this case the Commissioner appreciates that the requested information relates to an individual who is not part of the Welsh Government's senior management team.
51. The Commissioner notes that the withheld information relates to the individual in a professional capacity and there are no 'private' considerations. The document in question was created in his or her role

as a public sector employee. However, the Commissioner has taken into account the fact that the individual had no public facing role whilst working at the Welsh Government. The Commissioner also acknowledges the fact that the individual ceased to work for the Welsh Government before the request in this case was made. The Commissioner can therefore understand that he or she would reasonably expect their details to remain 'private' as they would not anticipate any requirement for them to be made 'public' in order for them to fulfil their occupational role.

52. Consequently the Commissioner considers that it would be unfair to release the name of the officer concerned in these circumstances and that disclosure would breach the first data protection principle. As he finds that disclosure would breach the first data protection principle the Commissioner has not gone on to consider any schedule 2 conditions.

Documents A, C and D

53. The information which has been withheld from these documents comprises the name of an individual involved in the River Lodge project and details of their involvement in the scheme.
54. The Welsh Government's position is that the individual would have had a reasonable expectation that the information would remain private due to the confidential relationship between employer and employee and disclosure would be unfair. The Welsh Government is also of the view that any legitimate public interest in disclosure would be outweighed by reason of prejudice to the rights and freedoms of the individual in question.
55. As stated in paragraph 34 of this notice, for reasons of confidentiality, the Commissioner's consideration of the Welsh Government's position in relation to information which has been withheld from this document has been discussed in the confidential annex attached to this Notice.
56. In summary, the Commissioner is satisfied that the individual would have had a reasonable expectation that the information would not be disclosed to the public at large. The Commissioner also considers that any disclosure would cause unwarranted interference to the rights and freedoms of the individual and this would outweigh the legitimate interest of the public in disclosure.
57. Taking into account the arguments outlined in the confidential annex, and the nature of the withheld information, the Commissioner does not consider that the legitimate interests of the public in accessing this information are sufficient to outweigh the individual's right to privacy.

The Commissioner considers that the individual had a reasonable expectation of privacy in relation to the withheld information and that to release this information would be unfair and likely to cause damage or distress to him or her.

58. In conclusion, the Commissioner finds that disclosure of the information requested would be unfair and would therefore contravene the first data protection principle. The Commissioner upholds the Welsh Government's application of section 40(2) to the withheld information.

Procedural Requirements

Section 1/Section 10

59. The original request was made on 23 March 2010. The Welsh Government responded on 14 June 2010, and disclosed some information relevant to the request. In failing to provide this information within 20 working days of the request, the Welsh Government breached section 10(1) of the Act.
60. The Commissioner also notes that during his investigation the Welsh Government decided to withdraw its application of sections 31(2)(b) and 43 of the Act and released additional information relevant to the request. As the Welsh Government did not release this information (information to which the complainant was entitled) to the complainant within 20 working days of his request, he has found the Welsh Government in breach of sections 1(1)(b) and 10(1) of the Act.

Section 17

61. The initial request was made on 24 March 2010 and the Welsh Government did not issue a refusal notice until 14 June 2010. In failing to respond to the request with a valid refusal notice within twenty working days of receipt, the Welsh Government did not comply with the requirements of section 17(1) of the Act.

The Decision

62. 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:
- It correctly applied section 40(2) in relation to the remaining withheld information.
63. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The Welsh Government breached section 10(1) for failing to provide the information disclosed on 14 June 2010 within 20 working days of the request.
- The Welsh Government breached sections 1(1)(b) and 10(1) of the Act for the elements of the request that were informally resolved during the Commissioner's investigation following its decision to disclose this additional information.
- The Welsh Government breached section 17(1) of the Act for failing to provide a valid refusal notice within 20 working days of receipt of the request.

Steps Required

64. The Commissioner requires no steps to be taken.

Other matters

65. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
66. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
67. As he has made clear in his 'Good Practice Guidance No 5', published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
68. The Commissioner is concerned that in this case, it took 80 working days for an internal review to be completed, despite the publication of his guidance on the matter. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the Welsh Government fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to remind the Welsh Government of the expected standards in this regard

and recommends that it aims to complete its future reviews within the Commissioner's standard timescale of 20 working days.

Right of Appeal

69. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

70. 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.

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

Dated the 16th day of June 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

"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."

Time for Compliance

Section 10(1) provides that –

"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."

Refusal of Request

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."

Personal information.

Section 40(1) provides that –

"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."

Section 40(2) provides that:

"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.”

Section 40(3) provides that –

“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.”

Section 40(4) provides that –

“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).”

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

Schedule 1

The first data protection principle

“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:

- "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."