



Scottish Information
Commissioner

**Decision 012/2007 Mr Frank French and South
Lanarkshire Council**

Reports submitted in relation to two planning applications

**Applicant: Mr Frank French
Authority: South Lanarkshire Council
Case Nos: 200600031 and 200600963
Decision Date: 25 January 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 012/2007 Mr Frank French and South Lanarkshire Council

Reports submitted in relation to planning applications – information withheld – personal data – commercial interests – Commissioner partly upheld the public authority’s decision to withhold information

Relevant statutory provisions and other sources

Freedom of Information Scotland Act 2002 (FOISA) sections 1(1) (General entitlement), 33(1)(b) (Commercial interests and the economy), 38(1)(b), read in conjunction with section 38(2)(b) (Personal data)

Data Protection Act 1998 (DPA) section 1 (Basic interpretative provisions), Schedule 1, Part 1, paragraph 1 (the first data protection principle), Schedule 2 (Conditions relevant for purposes of the first principle: processing of personal data).

Facts

In two separate but related requests for information, Mr French asked South Lanarkshire Council (the Council) to provide copies of reports submitted in relation to two planning applications. The Council disclosed these reports, but redacted some of the contents on the grounds that these parts were exempt from disclosure under sections 33(1) and 38(1)(b) of FOISA. For information considered exempt under section 33(1), the Council also concluded that the public interest in maintaining this exemption outweighed the public interest in disclosure of the information. Having first sought internal reviews of the handling of these requests, Mr French made two separate applications for decision by me in relation to the handling of his requests by the Council.

The Commissioner found that the Council had failed to comply fully with the requirements of Part 1 of FOISA in its responses to Mr French’s requests. He found that the exemption in section 33(1)(b) did not apply to any of the information under consideration. He found that the exemption in section 38(1)(b) had been correctly applied in relation to some of the information withheld, but not all. The Commissioner required further information to be supplied to Mr French in response to his requests.



Background

1. This decision is concerned with two separate but related requests for information made by Mr French. I will refer to these as the first and second requests respectively below.

The first request

2. On 21 February 2005, Mr French wrote to the Council with reference to the Planning Application Report Summary Sheet for a particular planning application which sought approval for the erection of a new dwelling at a site south-west of Crossford. Mr French asked for copies of various reports and background information referred to in the Council's report summary sheet.
3. The Council responded to this request on 17 March 2005, providing full copies of four of the six requested documents. However, the Council noted that information contained in the following reports was exempt from disclosure under FOISA:
 - a) Scottish Agricultural College Labour and Business justification report, dated May 2002 (the SAC report)
 - b) Warren Consultants background information to support the application. (the consultant's report).

The Council withheld the SAC report in its entirety, and the consultant's report was only partly disclosed. Both reports contain background information in support of the planning applicant's submission that the proposed dwelling was required in connection with the operation of an equestrian business at the site.

4. The Council explained that the information withheld had been judged to be exempt under the terms of sections 38 and 33 of FOISA. The Council also confirmed that having considered the public interest, it had reached the view that the public interest in disclosing the information was outweighed by the public interest in maintaining the exemptions.
5. Mr French sought a review of the Council's decision in a letter dated 24 May 2005. He noted that in March 2003, he and another person had been granted access to the SAC report at the Council's offices. Mr French submitted a copy of notes taken during this visit to demonstrate that public access to the report had been previously granted.
6. Mr French expressed the view that such documents were integral to the planning application to which they related, and as such should be available to the public to ensure that they were able to comment on the accuracy of the claims therein.



7. The Council notified Mr French of the outcome of its review in a notice dated 23 June 2005. This upheld the Council's initial decision to withhold parts of the consultant's report on the grounds that these parts were exempt under section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(ii). It concluded that the public interest in maintaining this exemption outweighed the public interest in disclosure of the information.
8. Although the Council had initially withheld the entire SAC report on the grounds that the exemption in section 33(1)(b) of FOISA applied, it amended this decision and disclosed part of this report following its review, having concluded that this exemption did not apply to all information contained in the report. However the Council maintained that the exemption had been correctly applied to the parts that were still withheld, and that the public interest in maintaining this exemption outweighed the public interest in disclosure of the information. The Council noted that the previous access to this report had been granted in error, and so this fact had no bearing on the decision to disclose.
9. Mr French then made an application for decision by me in relation to this request. His application, dated 21 December 2005, was received by my Office on 23 December 2005.
10. The case (200600031) was allocated to an investigating officer. It was then validated by establishing that Mr French had made a valid information request to a public authority under FOISA (i.e. to the Council), and had appealed to me only after asking the Council to review its response to the request.

The second request

11. Mr French's second request was submitted to the Council by email on 24 January 2006. This asked to be provided with copies of a specified planning application, including all diagrams and the justification supplied. The planning application was for the erection of a temporary residential building, again at the site to the south-west of Crossford.
12. The Council responded to this request on 15 February 2006, providing copies of the planning application and drawings. It also provided a copy of an associated report by Warren Consultants, with some information redacted (for ease of reference, I will refer to this as "the second consultant's report" in this decision). The Council specified that the information withheld from the disclosed version of the report was exempt from disclosure under sections 33(1)(b) and 38(1)(b) of FOISA.
13. Mr French sought a review of this decision in a letter dated 31 March 2006. He expressed concern about the accuracy of the information contained within the report and submitted that its full contents should be open to public scrutiny.



14. The Council notified Mr French of the outcome of its review in a notice dated 18 April 2006. The Council upheld its initial decision in full and provided details of which exemption had been judged to apply to each part that had been withheld from the second consultant's report. The Council also provided a detailed explanation of its reasons when applying each exemption.
15. Mr French then made an application for a decision by me in relation to his second request in a letter dated 27 May 2006, which was received on 31 May 2006. In this application, he set out detailed reasons for his view that the public interest favoured full disclosure of the second consultant's report. In particular, he noted that it is in the public interest that there is public scrutiny of the decision making process, and that such scrutiny contributes to ensuring that public authorities are adequately discharging their regulatory functions.
16. The new case (20060963) was allocated to an investigating officer. It was again validated by establishing that Mr French had made a valid information request to a public authority under FOISA (i.e. the Council), and had appealed to me only after asking the Council to review its response to the request.

Investigation

17. Following receipt of Mr French's first application, the investigating officer formally contacted the Council on 9 January 2006 in terms of section 49(3)(a) of FOISA, asking it to comment on the application as a whole, and to provide further information to inform the investigation. The Council was also asked to supply full copies of the SAC report and the consultant's report, and modified copies of these as provided to Mr French. The Council's response to this request was received on 31 January 2006.
18. Further information was sought by the investigating officer in a letter dated 29 March 2006. A response to this request was received on 5 May 2006.
19. Following receipt of Mr French's second application, the investigating officer again formally contacted the Council on 12 June 2006 in terms of section 49(3)(a) of FOISA, asking it to comment on this application as a whole and to provide further background information. The Council's response to this request was received on 8 August 2006.



20. Further clarification was later sought from the Council on the application of exemptions in both cases. This was prompted by the observation that financial information relating to the planning applicant's business had been considered exempt by the Council under section 33 in the SAC report and the second consultant's report, but similar information had been considered exempt under section 38 within the consultant's report.
21. The Council was asked to confirm whether financial information was considered to be personal data where it appeared in each report. In response to this request, the Council confirmed that financial information about the applicant's business was considered personal data (and exempt under section 38(1)(b) of FOSIA) in each of the reports.
22. The submissions made by the Council and Mr French in the course of the investigation are considered below. Although I do not summarise all the submissions received, I have taken all relevant arguments into consideration when reaching my decision in these cases.

The Commissioner's analysis and findings

23. Before going on to consider the application of the exemptions in this case, it is worth providing some background information on the information to which these were applied.
24. The reports requested by Mr French (and partially disclosed by the Council) were submitted to the Council in connection with two planning applications. These applications were made by the same individual for the erection of a dwelling at a particular site. The first of these applications was made in 2002, and was refused by the Council in 2005. The second application was made in 2006 and, at the time of writing, the Council's decision on this application had yet to be reached.
25. Mr French is a neighbour of the proposed development, and I understand that he has objected to both planning applications on various grounds. In particular, he has disputed the validity of the planning applicant's submissions that the erection of a new dwelling was/is justified on the grounds that it is required in connection with the operation of an equestrian business at the site.
26. The reports under consideration all provide background information in support of the two planning applications, and in particular the business justification for the proposed development. The information that was not supplied relates to the planning applicant's business and personal circumstances.



Section 33(1)(b) – commercial interests

27. The exemption in section 33(1)(b) has been applied to all information withheld from the SAC report in response to Mr French's first request, and some information withheld from the second consultant's report in response to his second request. Section 33(1)(b) specifies that information is exempt information where disclosure would, or would be likely to, prejudice substantially the commercial interests of any person. The exemption in section 33(1)(b) is a qualified exemption, which means that the application of this exemption is subject to the public interest test set out in section 2(1)(b) of FOISA.
28. The information withheld under this exemption from the SAC report is:
 - a) detail of the assets, profit and turnover of the planning applicant's equestrian business;
 - b) animal numbers (broken down into certain categories); and
 - c) staff numbers (again, broken down into certain categories).
29. The information withheld under this exemption from the second consultant's report is of a similar type:
 - a) details of the assets, profit and turnover of the planning applicant's equestrian business;
 - b) animal numbers; and
 - c) labour requirement calculations and actual staffing numbers.
30. In the course of the investigation, the Council confirmed that the information detailed in paragraphs 28(a) and 29(a) was also considered exempt under the terms of section 38 of FOISA.
31. The Council has submitted disclosure of the information detailed in paragraphs 28 and 29 would or would be likely to prejudice substantially that the commercial interests of the planning applicant. The Council stated that disclosure could well place the commercial activities of the planning applicant at a disadvantage if the information was available to competitors by disclosing the financial viability of the business, its assets and the number of employees.
32. Mr French has questioned the veracity of the statements contained in these reports, on the basis that he does not accept that a business has been operating at the site of the proposed development.



Conclusions on the application of section 33(1)(b)

33. In considering this exemption, I take “commercial interests” to mean a person's ability to successfully participate in a commercial activity, e.g. the sale and purchase of goods or services. There is no requirement that these activities are profit making before this exemption can be engaged, although it would be normal to expect a commercial enterprise to be organised for that purpose.
34. The Council has advised me that it understands the planning applicant's business to be a going concern, and I accept that this individual does have commercial interests.
35. However, I do not accept that disclosure of the information withheld within the SAC report would or would be likely to be substantially prejudicial to that individual's commercial interests. I note, for example, that this report is dated May 2002, and provides details of the operations that encompassed both a riding school and livery business. However, the second consultant's report, submitted to the Council in January 2006, makes clear that the nature of the business had changed in 2004 to livery only.
36. In this context, I cannot see how disclosure of the details of the operation of the business contained in the 2002 SAC report would be likely to substantially prejudicial to a business that had changed substantially in the interim. I do not accept that a competitor could now (or at the time the information request was processed by the Council) gain any significant commercial advantage through access to this outdated information.
37. For this reason, I conclude that the Council incorrectly applied the exemption in section 33(1)(b) to the information withheld from the SAC report in response to Mr French's first request for information.
38. I have also concluded that the exemption in section 33(1)(b) was wrongly applied to the information withheld under this section within the second consultant's report in response to Mr French's second request for information.
39. In the second consultant's report, the financial information considered exempt by the Council relates only to the financial years up to June 2004. As such, this information again reflects the financial position of the planning applicant's business before the nature of these operations changed substantially. As such, I do not see accept that disclosure of this information would be likely to prejudice substantially the commercial interests of this person in their current business circumstances (i.e. as at the time the information request was processed and subsequently).



40. The information about animal numbers, employee numbers and labour requirement calculations contained in the second consultant's report is based upon the current operations of a livery only business, and so is relevant to the current position of this enterprise only. However, I am not persuaded that this information is exempt under section 33(1)(b).
41. Through previous planning applications and decisions, the number of stables available on the site is a matter of public record. The presence of horses grazing on land owned by the planning applicant will also provide visual evidence of the number of horses based at the site at any time. I do not accept that revealing the details concerning the number of animals set out in the second consultant's report would or would be likely to prejudice substantially the (current) commercial interests of the planning applicant.
42. Having reached this conclusion, I am also not persuaded that details of the labour requirement calculations, or detail of actual employee numbers would be likely to prejudice substantially the commercial interests of the planning applicant.
43. Having concluded that the exemption in section 33(1)(b) has been wrongly applied in response to both of Mr French's requests, there is no need for me to go on to consider the public interest as it relates to the information to which it was applied.

Section 38(1)(b) – personal data

44. The exemption in section 38(1)(b) of FOISA was applied by the Council to information contained within each of the reports under consideration in this decision.
45. The information withheld from the consultant's report in response to Mr French's first request is:
 - a) Paragraph 2.1 – first sentence
 - b) Paragraph 2.6 – third and fourth sentences
 - c) Paragraph 2.7 – entirely
 - d) Paragraph 3.1 - Second sentence up to “..and requires...”
 - e) Paragraph 4.4 – all except the final sentence
 - f) Paragraph 4.7 – first sentence
 - g) Paragraph 6.8 – Final two sentences.
46. The information withheld from the SAC report (request 1) is:
 - a) Partial content of the table and the following two paragraphs under the heading “Business Viability and Establishment”



47. The information withheld from the second consultant's report in response to Mr French's second request is:
 - a) Paragraph 1 – four words following “1996” in second sentence
 - b) Paragraph 2 – information withheld from lines 4 - 8
 - c) Paragraph 3 – six words following “lives” in the first sentence, and the remainder of second sentence following “situation”.
48. In response to both of Mr French's requests, the Council initially applied section 38(1)(b) in conjunction with section 38(2)(a)(ii). Together these provisions provide that information is exempt where it is personal data for the purposes of the DPA, and disclosure would contravene section 10 of the DPA (right to prevent processing likely to cause damage or distress).
49. However, in the course of the investigation by my Office prompted by the first request, and in the course of its own review of Mr French's second request, the Council reconsidered its position on the application of section 38.
50. In both cases, the Council submitted to my Office that its initial response had been incorrect and that the information concerned was now considered exempt under section 38(1)(b) of FOISA, read in conjunction with section 38(2)(b). These sections together apply where information is personal data as defined by the DPA (and for the purposes of section 38(2)(b), particularly as defined in section 1(1)(e) of the DPA, i.e. recorded information not falling within any of the other categories of information set out in section 1(1)), and where disclosure of such information would breach any of the data protection principles (disregarding any of the exemptions from the principles applied by the DPA to manual data). In this case, the Council has submitted that disclosure would breach the first data protection principle.
51. I am therefore required to consider two separate matters: firstly, whether the information under consideration is personal data and, if so, whether the release of the information to Mr French would breach the first data protection principle.
52. It must be borne in mind that this particular exemption is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1) of FOISA.
53. “Personal data” is defined in section 1(1) of the DPA 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, 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.”



54. The definition of what amounts to “personal data” for the purposes of the DPA was considered in the case of *Durant v Financial Services Authority* [2003] EWCA Civ 1746. In that case, the (English) Court of Appeal decided that whether or not data constituted “personal data” for the purposes of the legislation depended on the relevance or proximity of the data to the data subject. The court considered that the information required to be biographical in a significant sense and that the information should have the subject as its focus – in short, it should affect the individual’s privacy.
55. Having considered the information identified in paragraphs 45, 46 and 47 above, I am satisfied that all of the information identified constitutes personal data relating to the planning applicant. This includes information about the personal life and circumstances of this individual, and also includes information relating to the finances of a business that this person operates as a sole trader.

Would release of the information breach the first data protection principle?

56. The Council has submitted that disclosure of the information identified in paragraphs 45, 46 and 47 would breach the first data protection principle, which states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
57. I have considered the definition of “sensitive personal data” in section 2 of the DPA and do not consider that any of the information sought by Mr French falls into this category.
58. According to guidance from the Information Commissioner (“Freedom of Information Awareness Guidance 1”, which can be viewed at <http://www.ico.gov.uk/documentUploads/AG%201%20personal%20info.pdf>), the assessment of fairness includes looking at whether the third party would expect that his/her information might be disclosed to others and/or whether the third party would expect that his/her information would be kept private.
59. The Council has stated that the applicant for planning permission would not expect the information concerned to be disclosed to the public. In addition, the Council has stated that disclosure would cause unwarranted distress to the planning applicant, and would cause unjustifiable harm to the financial interests of this person.



60. In considering whether disclosure of this information would be fair and lawful, I have noted that the reports requested by Mr French were submitted to the Council in the context of the statutory planning process. Under the terms of the Town and Country Planning (Scotland) Act 1997, local authorities are required to make planning applications and associated drawings available for public inspection within the planning register. Planning applicants should therefore expect certain personal information (including their name and address) to be made publicly available in the course of the planning process.
61. I have considered whether disclosure of the personal information relating to the planning applicant to Mr French would satisfy condition 6 in Schedule 2 of the DPA. This condition covers processing (for example, by disclosure) which is necessary for the purposes of legitimate interests pursued by the third party to whom information is 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.
62. I do accept that Mr French, as a neighbour of the proposed development site has a legitimate interest in the relevant planning applications and associated information submitted to the Council in support of these. I consider that in the context of a planning application, applicants' expectations will be informed by the public scrutiny allowed within the statutory process. I also note that information relating to the ownership of land is already publicly available from the Land Register or (as appropriate) the Register of Sasines.
63. Bearing in mind the considerations I have outlined in paragraph 62 above, I have also considered whether disclosure of any of the information requested would be in any wider sense unfair to the applicant for planning permission, or whether it would be unlawful, for example by breaching a subsisting obligation of confidentiality or other prohibition on disclosure. I have also considered whether any of the other Schedule 2 conditions would be relevant to Mr French's request and am satisfied that none of them would be.
64. Given these observations, and having balanced the respective interests of Mr French and the applicant for planning permission for the purposes of condition 6, I have concluded that the exemption in section 38(1)(b) has been wrongly applied by the Council to some of the information identified in paragraph 45 above. I do not find that the first data protection principle would be breached by the disclosure of the following information within the consultant's report, and I require this now to be provided to Mr French:
- a) Paragraph 2.1 – the first sentence, excluding the final four words.
 - b) Paragraph 3.1 – the parts of this paragraph previously withheld, excluding the final two words that were withheld.
 - c) Paragraph 6.8 – The second sentence, excluding those parts on the final line of this paragraph.



65. However, I have concluded that the Council correctly applied the exemption in section 38(1)(b) to the remaining information listed in paragraphs 45, 46 and 47. I have concluded that the disclosure of this information would entail an unwarranted intrusion into the personal life (including the business affairs) of the planning applicant concerned, while this disclosure would not contribute to the pursuit of the legitimate interests of Mr French (or any other person) in relation to the planning process. For that reason, I do not consider the condition 6 in Schedule 2 of the DPA, or the wider requirements of fairness and lawfulness enshrined in the first data protection principle, to be met in relation to this case.
66. I have concluded that disclosure of the remaining information to which the Council applied section 38(1)(b), identified in paragraphs 45 – 47 above, would entail a breach of the first data protection principle. I have therefore concluded that the exemption in 38(1)(b) of FOISA was correctly applied to this information.

Decision

I find that South Lanarkshire Council (the Council) failed to act fully in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to his two requests for information.

The first request – SAC report

I have found that the Council wrongly applied the exemption in section 33(1)(b) of FOISA to information contained in the SAC report, and so it breached section 1(1) of FOSIA by failing to provide this to Mr French where no other exemption applied.

However, I have found that the exemption in section 38(1)(b) of FOISA was correctly applied to the information withheld from the version of the SAC report supplied to Mr French within the table and the following two paragraphs under the heading “Business Viability and Establishment”.

In order to comply with section 1(1) of FOISA, I require the Council now to supply a copy of the SAC report to Mr French, excluding the content detailed above.

The first request – consultant’s report

I have found that the exemption in section 38(1)(b) of FOISA was incorrectly applied to those parts of the consultant’s report identified in paragraph 64 above. The Council failed to comply with section 1(1) of FOISA by failing to provide this information to Mr French.



However, I have concluded that the exemption in section 38(1)(b) of FOISA was correctly applied to the following parts of the consultant's report:

- a) Paragraph 2.1 – the final four words of the first sentence
- b) Paragraph 2.6 – third and fourth sentences
- c) Paragraph 2.7 – entirely
- d) Paragraph 3.1 – the two words preceding “..and requires...”
- e) Paragraph 4.4 – all except the final sentence
- f) Paragraph 4.7 – first sentence
- g) Paragraph 6.8 – The final line of this paragraph.

In order to comply with section 1(1) of FOISA, I now require the Council to provide a copy of the consultant's report to Mr French, excluding the parts listed above.

The second request – second consultant's report

I have found that the Council incorrectly applied the exemption in section 33(1)(b) of FOISA to information contained in the second consultant's report, and so it breached section 1(1) of FOSIA by failing to provide this information to Mr French where no other exemption applied.

I have found that the exemption in section 38(1)(b) was correctly applied to the following parts of this document:

- a) Paragraph 1 – four words following “1996” in second sentence
- b) Paragraph 2 – information withheld from lines 4 - 8
- c) Paragraph 3 – six words following “lives” in the first sentence, and the remainder of second sentence following “situation”.

In order to comply with section 1(1) of FOISA, I now require the Council to provide a copy of the second consultant's report to Mr French, excluding these parts.

I require the Council to take the steps set out above within 45 days of the receipt of this decision.

Appeal

Should either Mr French or the Council wish to appeal against my decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.



Kevin Dunion
Scottish Information Commissioner
25 January 2007



APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002:

1 General entitlement

(1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

33 Commercial interests and the economy

(1) Information is exempt information if-

- (a) it constitutes a trade secret; or
- (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-

- (a) the economic interests of the whole or part of the United Kingdom; or
- (b) the financial interests of an administration in the United Kingdom.

(3) In subsection (2), "administration in the United Kingdom" has the same meaning as in section 28(2).

38 Personal information

(1) Information is exempt information if it constitutes-

- (a) personal data of which the applicant is the data subject;
- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
- (c) personal census information; or
- (d) a deceased person's health record.

(2) The first condition is-



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

- (i) any of the data protection principles; or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress); and

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

[...]

(5) In this section-

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

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

[...]

Data Protection Act 1998:

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

[...]

"personal data" means data which relate to a living individual who can be identified-

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

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



SCHEDULE

1

THE DATA PROTECTION PRINCIPLES

PART I

THE PRINCIPLES

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

SCHEDULE

2

CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

[...]

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

(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.