

Decision Notice

Decision 082/2016: Mr Paul Hutcheon and the Chief Constable of the Police Service of Scotland

Reports on Ethics and Police Scotland

Reference No: 201501390

Decision Date: 08 April 2016



Scottish Information
Commissioner

Summary

On 18 May 2015, Mr Hutcheon asked the Chief Constable of the Police Service of Scotland (Police Scotland) for reports on ethics and Police Scotland.

Police Scotland withheld the information under sections 30(b)(ii) and 38(1)(b) of FOISA. During the investigation, Police Scotland disclosed some information to Mr Hutcheon but continued to withhold the remainder.

The Commissioner investigated and found that Police Scotland had partially failed to respond to Mr Hutcheon's request for information in accordance with Part 1 of FOISA by wrongly withholding some information. She required Police Scotland to disclose it to Mr Hutcheon. The Commissioner accepted that Police Scotland were entitled to withhold other information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 30(b)(ii) (Prejudice to effective conduct of public affairs); 38(1)(b), (2)(a)(i), (2)(b) and (5) (definitions of "data protection principles", "data subject" and "personal information") (Personal information)

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 18 May 2015, Mr Hutcheon made a request for information to Police Scotland. The information requested was all reports written by Chief Inspector Richie Adams in calendar years 2013, 2014 and 2015 on Ethics and Police Scotland. Mr Hutcheon requested other information that is not the subject of this decision notice.
2. Police Scotland wrote to Mr Hutcheon on 21 May 2015. Police Scotland asked Mr Hutcheon to clarify his interpretation of a "report".
3. Mr Hutcheon responded on 21 May 2015. He referred Police Scotland to the Oxford Dictionary definition of the word "report".
4. Police Scotland did not respond to Mr Hutcheon's request. On 22 June 2015, Mr Hutcheon wrote to Police Scotland requiring a review of their failure to respond.
5. Police Scotland notified Mr Hutcheon of the outcome of their review on 7 July 2015. Police Scotland informed Mr Hutcheon that they held three reports falling within the scope of his request. However, they withheld the information under the exemptions in section 30(b)(ii) and 30(c) of FOISA (Prejudice to the effective conduct of public affairs).

6. On 27 July 2015, Mr Hutcheon wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Hutcheon stated he was dissatisfied with the outcome of Police Scotland's review as he believed the information should be disclosed in the public interest.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Hutcheon made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision.
8. On 10 September 2015, Police Scotland were notified in writing that Mr Hutcheon had made a valid application. Police Scotland were asked to send the Commissioner the information withheld from Mr Hutcheon. Police Scotland provided the information and the case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and answer specific questions to explain the context of each report and any exemptions applied to them.
10. Police Scotland provided submissions in response. At this stage, Police Scotland stated that they no longer wished to rely on the exemption in section 30(c) of FOISA and considered all of the information to be exempt from disclosure in terms of section 30(b)(ii) of FOISA.
11. During the investigation, Police Scotland disclosed one of the withheld reports to Mr Hutcheon (document 2) with the exception of Appendix A. Police Scotland withheld Appendix A on the basis that it comprised a list of individuals who had been consulted in connection with the report. Police Scotland considered this was personal data which was exempt from disclosure in terms of section 38(1)(b) of FOISA (as well as section 30(b)(ii)). This is considered in more detail in what follows. Mr Hutcheon confirmed that the information disclosed to him by Police Scotland could be disregarded for the purposes of this decision.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Hutcheon and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

Section 30(b)(ii) – Prejudice to effective conduct of public affairs

13. Police Scotland applied this exemption to all parts of the withheld information, i.e. documents 1 and 3 and Appendix A to document 2.
14. In order to rely on the exemption laid down in section 30(b)(ii), Police Scotland must show that disclosure of the information would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.
15. The Commissioner expects authorities to be able to demonstrate a real risk or likelihood that actual harm will occur at some time in the near (certainly the foreseeable) future, not simply that harm is a remote possibility. Also, the harm in question should take the form of substantial inhibition from expressing views in as free and frank a manner as would be the

case if disclosure could not be expected to follow. The word “substantial” is important here: the degree to which a person will be, or is likely to be, inhibited in expressing themselves has to be of some real and demonstrable significance.

Police Scotland's submissions

Document 1

16. Police Scotland stated that this was a report which considered the merits of setting up an ethical advisory group. Police Scotland submitted that the report comprised an “early thinking” proposal, which was not adopted as policy. In their view, disclosure of the information could lead to misinterpretation of its content: it did not reflect the views of Police Scotland, but only those of the author.

Document 2 (Appendix A)

17. Police Scotland stated that this was part of a report relating to an ongoing project regarding a Code of Ethics for Police Scotland. As noted above, the withheld information is a list of individuals consulted in connection with the report. Police Scotland submitted that individual consultees would expect a degree of privacy when providing their personal views. In Police Scotland's view, disclosure of this information could result in individuals being unwilling to contribute their opinions in future, in anticipation that their views would be publicly disclosed. (The report itself was disclosed to Mr Hutcheon during the investigation with the exception of Appendix A.)

Document 3

18. Police Scotland stated that this document was a draft version of a report prepared as part of a quality assurance review. Police Scotland submitted that this draft report stimulated and influenced thinking, but did not reflect the position adopted in the final version. They stated that the draft included semi-structured interviews and focus group responses, where all participants were given assurances of confidentiality within the process to ensure optimal information was given. Police Scotland argued that the assurance of anonymity ensured a level of frankness and openness which would not otherwise have been given. In Police Scotland's view, disclosure of this information would undermine such candour in future and might hamper any future research focussed on the improvement of policing.

The Commissioner's view

19. The Commissioner has considered the content of the withheld information, along with Police Scotland's submissions.
20. In relation to document 1, the Commissioner notes that the content of the report was not adopted as policy, but is unable to accept that its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.
21. The concept of establishing a group of advisers to assist the Police with ethical considerations is neither controversial nor contentious. At this level, the nature of the proposal has been made apparent to Mr Hutcheon in any event. It has also been explained to him (as it has to the Commissioner) that the report represents the views of the author and not those of Police Scotland: the scope for misinterpretation on this point is not obvious.
22. The report itself is non-committal and makes recommendations to be considered in the event that a decision is taken, in principle, to develop the work. As Police Scotland have taken a decision not to progress this as a policy, the Commissioner does not consider there is any danger of ongoing policy work or decision-making being side-tracked by discussions about

the content of the report. The Commissioner is unable to identify anything in the content or context of the report which might reasonably be expected to have a significant inhibiting effect on the free and frank exchange of views for the purposes of deliberation.

23. Therefore, the Commissioner is unable to agree with Police Scotland that the disclosure of this information would cause the harm envisaged. Having reached this conclusion, the Commissioner does not accept that the disclosure of the information in document 1 is exempt from disclosure in terms of section 30(b)(ii) of FOISA and requires Police Scotland to disclose it to Mr Hutcheon.
24. In relation to Appendix A of document 2, the Commissioner notes that Police Scotland's submissions focus on their belief that people may be dissuaded from participating as consultees if they believed their views may be disclosed. In this case, it is not their views that would be disclosed, merely the fact of their participation. The Commissioner notes also that the content of the report itself (which has been disclosed to Mr Hutcheon) does not identify the specific views of any of the consultees, nor does it attribute any particular comment or view to any individual.
25. Consequently, the Commissioner does not agree with Police Scotland that disclosure of this information would cause the harm envisaged and does not accept that the disclosure of the information in Appendix A of document 2 is exempt from disclosure in terms of section 30(b)(ii) of FOISA. Police Scotland also applied the exemption in section 38(1)(b) of FOISA to this information, and this is considered below.
26. In relation to document 3, the Commissioner accepts that the exemption is engaged. She is satisfied that disclosure of this information would be likely to result in views being provided in a more guarded and less candid manner in future. She notes that some of the comments within the report are attributed to individuals or groups of individuals. The Commissioner agrees with Police Scotland that disclosure of the information would inhibit any similar research projects carried out in future, to a significant extent.
27. The Commissioner concludes, therefore, that the exemption in section 30(b)(ii) of FOISA is engaged in relation to the information contained in document 3. She accepts that disclosure of this information would, or would be likely to inhibit substantially the free and frank exchange of views for the purposes of deliberation.
28. Having concluded that the information in document 3 is exempt from disclosure under section 30(b)(ii), the Commissioner must go on to consider the application of the public interest test in section 2(1)(b) of FOISA in relation to this information.

The public interest test

29. Police Scotland submitted that it was not in the public interest to disclose detailed information concerning deliberations and thinking in relation to draft documents. In their view, if individuals were unwilling to contribute to such deliberations, or put forward proposals in the future fearing their views were publicly attributable, the proper purpose of such deliberation would be hindered. Police Scotland argued that debate would be stifled by anticipated public disclosure. They also considered disclosure could have a detrimental effect on individuals, for these reasons.
30. Mr Hutcheon stated that he believed the withheld information should be disclosed as he considered the subject matter was in the public interest.

31. The Commissioner recognises that there is always a public interest in transparency and accountability and in scrutinising the decisions, and decision making processes, followed by public authorities. The matters under consideration in this case are clearly of public importance.
32. The Commissioner also recognises that there is a public interest in allowing participants in a consultation exercise an opportunity to share opinions and views with candour. The Commissioner has already concluded that disclosure of the information would be likely to substantially inhibit individuals from expressing their opinions and views. She considers that such inhibition would hamper future policy and decision making within Police Scotland and would be contrary to the public interest. The Commissioner therefore finds that the public interest in disclosure of this information is outweighed by that in favour of maintaining the exemption contained in section 30(b)(ii) of FOISA.
33. Accordingly, the Commissioner has concluded that Police Scotland were entitled to withhold the information contained in document 3 in terms of section 30(b)(ii) of FOISA.

Section 38(1)(b) – Personal information

34. Police Scotland applied the exemption in section 38(1)(b) to the personal data of consultees named in Appendix A of document 2. The withheld information comprises (generally) the names and job titles of consultees. Police Scotland considered disclosure of the information would breach the first data protection principle and that none of the conditions in Schedule 2 to the DPA could be met.
35. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or, as appropriate, section 38(2)(b), exempts information from disclosure if it is “personal data” (as defined in section 1(1) of the DPA) and its disclosure would contravene one or more of the data protection principles set out in Schedule 1 to the DPA.
36. The exemption in section 38(1)(b) of FOISA is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.
37. In order to rely on this exemption, Police Scotland must show that the information being withheld is personal data for the purposes of the DPA and that its disclosure into the public domain (which is the effect of disclosure under FOISA) would contravene one or more of the data protection principles to be found in Schedule 1 to the DPA.
38. During the investigation, Mr Hutcheon stated that he was only interested in obtaining the names of senior employees in the Police. Consequently, the Commissioner has considered the application of this exemption only in relation to the personal data of individuals who were senior employees of the predecessor constabularies of Police Scotland or Police Services elsewhere in the United Kingdom.

Is the information under consideration personal data?

39. Personal data are defined in section 1(1) of the DPA as data which relate to a living individual who can be identified: a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller. (The full definition is set out in Appendix 1.)
40. The Commissioner is satisfied that the information under consideration is personal data, in line with the definition in part (a) of section 1(1) of the DPA. Living individuals, i.e. individual consultees who are the subject of the information, can be identified from this information.

Given its nature (names, job titles and employers), the Commissioner is satisfied that the information clearly relates to them.

Would disclosure contravene the first data protection principle?

41. Police Scotland submitted that making this information available would breach the first data protection principle. This 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 to the DPA is met. The processing in this case would be making the information publicly available in response to Mr Hutcheon's request.
42. If the withheld information were sensitive personal data, as defined in section 2 of the DPA, a condition in Schedule 3 to the DPA would also need to be met. The Commissioner is satisfied that the information under consideration here is not sensitive personal data.

Can any of the conditions in Schedule 2 be met?

43. When considering the conditions in Schedule 2, the Commissioner has noted Lord Hope's comment in the case of *Common Services Agency v Scottish Information Commissioner [2008] UKHL 47*¹, that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information, but rather to protect personal data from being processed in a way that might prejudice the rights, freedoms or legitimate interests of the data subject (i.e. the person or persons to whom the data relate).
44. It appears to the Commissioner that condition 6 in Schedule 2 is the only one which might permit disclosure to Mr Hutcheon. In any event, neither Mr Hutcheon nor Police Scotland have suggested that any other condition would be relevant.
45. Condition 6 allows personal data to be processed if that 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.
46. There are, therefore, a number of tests which must be met before condition 6(1) can apply. These are:
 - (i) Does Mr Hutcheon have a legitimate interest in obtaining the personal data?
 - (ii) If so, is the disclosure necessary to achieve those legitimate interests? In other words, is disclosure proportionate as a means and fairly balances as to ends, or could these legitimate interest be achieved by means which interfere less with the privacy of the data subjects?
 - (iii) Even if disclosure is necessary for those purposes, would it nevertheless be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects? As noted by Lord Hope in the above judgment, there is no presumption in favour of disclosure of personal data under the general obligation laid down in FOISA. The legitimate interests of Mr Hutcheon must outweigh the rights and freedoms or legitimate interests of the data subjects before condition 6 will permit the personal data to be disclosed.

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

Does Mr Hutcheon have a legitimate interest in obtaining the personal data?

47. There is no definition in the DPA of what constitutes a "legitimate interest." The Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. The Commissioner's guidance on section 38 of FOISA² states:

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

48. Police Scotland acknowledged that Mr Hutcheon would have a legitimate interest to the information as a journalist who may wish to write a story regarding the report and the contributors to the report. Mr Hutcheon simply highlighted a general public interest in disclosure, in relation to the names of senior employees.

49. In the Commissioner's view, Mr Hutcheon (with the wider public) has a legitimate interest in obtaining the withheld personal data. The report itself (which has already been disclosed to Mr Hutcheon) concerns a matter of considerable public interest. In the Commissioner's view, disclosure of the names of the individuals who were consulted would allow some insight into the range of expertise utilised by Police Scotland as part of its preparation.

Is disclosure necessary to achieve those legitimate interests?

50. Having concluded that Mr Hutcheon has a legitimate interest in obtaining the withheld personal data, the Commissioner must now consider whether disclosure of the personal data is necessary to achieve those legitimate aims. In doing so, she must consider whether these interests might reasonably be met by any alternative means, interfering less with the privacy of the individuals concerned.

51. In Police Scotland's view, there was an overarching need to ensure the process which had taken place remained confidential and effective. They stated they were unable to see how disclosure was necessary to achieve Mr Hutcheon's aims.

52. Having reviewed the withheld information, the Commissioner cannot identify any other viable means of meeting Mr Hutcheon's interests which would interfere less with the privacy of the data subjects than providing the withheld personal data. For this reason, the Commissioner is satisfied that disclosure of the information is necessary for the purposes of Mr Hutcheon's legitimate interests.

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

53. The Commissioner is satisfied that disclosure of the withheld personal data is necessary to fulfil Mr Hutcheon's legitimate interests, but must now consider whether that disclosure would nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects. This involves a balancing exercise between the legitimate interests of Mr Hutcheon and the data subjects in question. Only if the legitimate interests of Mr Hutcheon outweigh those of the data subjects can the data be disclosed without breaching the first data protection principle.

² <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.aspx>

54. In the Commissioner's briefing on the personal information exemption, she notes a number of factors which should be taken into account in carrying out the balancing exercise. These include:
- whether the information relates to an individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances)
 - the potential harm or distress that might be caused by disclosure
 - whether the individual objected to the disclosure
 - the reasonable expectations of the individual as to whether the information should be disclosed.
55. Police Scotland submitted that the data subjects would expect their anonymity to be maintained and thus gave their professional views and opinions freely and candidly. The individuals concerned had never been made aware that their involvement would be made public. In Police Scotland's view, individuals participating or assisting in this research would have no expectation that their involvement would be made public. They stated that the participants were advised that their interviews would remain confidential and be reflected accordingly in the internal report. Police Scotland stated that no documentation was provided to demonstrate this, but personal assurance was given by the project manager.
56. Police Scotland submitted that this expectation of privacy and confidentiality would be completely ignored by public disclosure and, in their view, the data subjects' rights and freedoms or legitimate interests would be overridden. In their view, disclosure was completely unwarranted.
57. The Commissioner has considered Police Scotland's submissions carefully. The Commissioner recognises that some assurances appear to have been provided to participants by Police Scotland concerning the actual content of their interviews and the fact that these would remain confidential.
58. In this case, the personal information under consideration is not the actual content of any interviews, or views expressed by any of the data subjects. Rather, it is the mere fact of those individuals' participation as consultees.
59. As noted above, Mr Hutcheon indicated that he is interested only in obtaining information concerning senior Police employees. The Commissioner has taken this to include senior Police officers. In the Commissioner's view, such officers and employees should have some expectation that the mere fact of their participation in a research project of this nature would be subject to public scrutiny.
60. The Commissioner is not persuaded that the disclosure of this information could cause any real distress to the data subjects. As noted above, no details of their interviews or comments are under consideration in this case. Consequently, the Commissioner is not satisfied that disclosure of the information would be prejudicial, given that it would merely confirm the data subjects' roles as consultees for the report.
61. The Commissioner has balanced the legitimate interest of the data subjects against those of Mr Hutcheon and the wider public. On balance, she takes the view that the legitimate interests served by disclosure of the information to Mr Hutcheon (and the wider public) outweigh any prejudice that would be caused to the data subjects' rights and freedoms or legitimate interests. Consequently, she finds that such prejudice would not be unwarranted.

The Commissioner is satisfied therefore that condition 6 of Schedule 2 is met in relation to the personal data under consideration.

62. Having reached this conclusion, the Commissioner has gone on to consider whether (as required by the first data protection principle) disclosure of the withheld personal data would be fair and lawful.
63. In their submissions to the Commissioner, Police Scotland argued that disclosure would not comply with any of the purposes for which the information was recorded by them. They stated that this was for the purposes of research, where confidentiality was assured to the participants. Police Scotland submitted that disclosure would therefore be unlawful. Additionally, they argued that disclosure of the information would not provide reassurance to the data subjects or the general public that the Police would act with respect, integrity and confidentiality. In their view, this would be unfair.
64. The Commissioner understands these arguments to be more in line with the provisions of the second data protection principle, whereas Police Scotland have argued that disclosure would breach the first data protection principle. In any event, the Commissioner considers disclosure would be fair for the reasons already outlined in relation to condition 6 above.
65. Police Scotland's submissions have focussed on the potential disclosure of the contributions made by participants, not the fact of their participation. Assurances appear to have been given to the data subjects that their interviews and contributions would remain confidential. Police Scotland stated that the consultees were never advised that their identity would be made public, but no evidence has been provided showing that the data subjects were informed that their participation (as consultees, as opposed to the content of their contributions) would not be made public.
66. Whilst Police Scotland have also argued that disclosure would be unlawful, the Commissioner is unable to identify (having concluded that condition 6 of Schedule 2 to the DPA can be met in the circumstances) any specific law forbidding disclosure.
67. Having found disclosure of the withheld personal data to be both fair and lawful, and in accordance with condition 6(1), the Commissioner therefore concludes that disclosure would not breach the first data protection principle.
68. The Commissioner therefore finds that the exemption in section 38(1)(b) of FOISA has been wrongly applied by Police Scotland to the identities of the data subjects under consideration here.
69. The Commissioner requires Police Scotland to disclose to Mr Hutcheon the identities of the senior Police officers and employees whose names are included in Appendix A of document 2.
70. With this decision, the Commissioner will provide Police Scotland with a marked up copy of Appendix A of document 2, indicating the information that should be disclosed.

Decision

The Commissioner finds that the Chief Constable of Police Scotland (Police Scotland) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hutcheon.

The Commissioner finds that Police Scotland was entitled to withhold some information under section 30(b)(ii) of FOISA. .

However, the Commissioner finds that Police Scotland incorrectly withheld other information under sections 30(b)(ii) and 38(1)(b) of FOISA.

The Commissioner requires Police Scotland to provide Mr Hutcheon with the information identified at paragraphs 23 and 69 above by **23 May 2016**.

Appeal

Should either Mr Hutcheon or the Chief Constable of the Police Service of Scotland wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Chief Constable of the Police Service of Scotland (Police Scotland) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Police Scotland have failed to comply. The Court has the right to inquire into the matter and may deal with Police Scotland as if they had committed a contempt of court.

Rosemary Agnew
Scottish Information Commissioner

08 April 2016

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

- (e) in subsection (1) of section 38 –

...

- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-

...

- (ii) the free and frank exchange of views for the purposes of deliberation; or

...

38 Personal information

(1) Information is exempt information if it constitutes-

...

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

...

(2) The first condition is-

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

(i) any of the data protection principles; or

...

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

...

(5) In this section-

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

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

...

Data Protection Act 1998

1 Basic interpretative provisions

(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

...

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.

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