

# Decision Notice



Decision 126/2009 Mrs Teresa Cleere-Martin and Glasgow City Council

Minutes of the Young People's Sexual Health Steering Group

Reference No: 200801852

Decision Date: 4 November 2009

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mrs Cleere-Martin requested from Glasgow City Council (the Council) copies of all the minutes of the Young People's Sexual Health Steering Group. The Council provided copies of the minutes subject to redaction under sections 30 and 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mrs Cleere-Martin remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Mrs Cleere-Martin's request for information in accordance with Part 1 of FOISA, by withholding information he could not accept as being of sufficient sensitivity to merit exemption under section 30(b)(ii) of FOISA. In addition, he could not accept the Council's contention that certain information was personal data. He required the Council to release the withheld information, with the exception of certain personal data.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement), 2 (Effect of exemptions), 30(b)(ii) (Prejudice to effective conduct of public affairs), 38(1)(b), (2) and 5 (Personal information).

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions); Schedules 1 (The data protection principles: the first principle) and 2 (Conditions relevant for 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 the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 30 October 2008, Mrs Cleere-Martin wrote to the Council requesting unredacted copies of previously received minutes of the Young People's Sexual Health Steering Group (formally Teenage Pregnancy Steering Group). Mrs Cleere-Martin listed the dates of the meetings in question, which ranged from 17 June 2004 to 10 April 2008.



2. The Council responded on 5 November 2008. The Council supplied a copy of the minutes in question subject to redactions. The Council withheld the redacted information on the basis that it was exempt under sections 30 and 38(1)(b) of FOISA.
3. On 10 November 2008, Mrs Cleere-Martin wrote to the Council requesting a review of its decision. She did not agree with the Council's application of sections 30 and 38(1)(b) to withhold information, and also informed the Council that she was aware of another individual who had received copies of the minutes in an unredacted form.
4. The Council notified Mrs Cleere-Martin of the outcome of its review on 4 December 2008. In its response the Council upheld its original decision with regard to its application of section 30(b)(ii) of FOISA without amendment. However, with respect to the application of section 38(1)(b) of FOISA the Council released the names of officers who had consented to their release. The Council upheld its reliance on section 38(1)(b) in respect of the remaining names.
5. On 15 December 2008, Mrs Cleere-Martin wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mrs Cleere-Martin had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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7. On 22 December 2008, the Council was notified in writing that an application had been received from Mrs Cleere-Martin and was asked to provide the Commissioner with any information withheld from her. The Council responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested (with particular reference to the requirements of sections 30(b) and 38(1)(b)).
9. Within her application to the Commissioner, Mrs Cleere-Martin was particularly dissatisfied with the Council's redaction of staff names and its consideration of the public interest test. Furthermore, Mrs Cleere-Martin believed she was being discriminated by the Council as she understood that full copies of these minutes had been provided to another individual as a result of a request.



10. During the course of the investigation, Mrs Cleere-Martin provided confirmation of a previous request from another individual which appeared to have resulted in full disclosure of some of the minutes in question. Although the earlier request could not (given its timing) have encompassed all of the minutes falling within the scope of Mrs Cleere-Martin's request, the Council was asked to comment on the information supplied in this connection.
11. During the course of the investigation, the Council agreed to provide Mrs Cleere-Martin with a full copy of the minutes it understood to have been encompassed by the request referred to in paragraph 10.

### **Commissioner's analysis and findings**

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12. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mrs Cleere-Martin and the Council and is satisfied that no matter of relevance has been overlooked.

#### **Background**

13. The Council advised that the Young People's Sexual Health Steering Group (previously the Teenage Pregnancy Steering Group (the Group)) was largely an officers' group chaired by the Depute Leader of the Council. It described the Group as a forum for discussion, debate and formulation of ideas/proposals to be put to other Committees, Groups etc of the Council for ratification and approval.
14. Mrs Cleere-Martin's request encompassed 20 sets of minutes ranging from 17 June 2004 to 10 May 2008, each subject to redaction under section 30(b)(ii) and/or section 38(1)(b) of FOISA. In the course of the investigation, the Council accepted that four minutes of the Group (17 June 2004, 13 October 2004, 25 November 2004 and 3 February 2005) would have been released in full in response to the earlier request referred to in paragraph 10: these were released to Mrs Cleere-Martin and the Commissioner is satisfied that it is not necessary to consider them further in this decision. The following redacted information was also released during the course of the investigation and will not be considered further in this decision notice:
  - minute of 12 January 2006 (item 4.2)
  - minute of 10 April 2008 (item 5.3).

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

15. Generally speaking, the exemptions in section 30(b) of FOISA allow information to be withheld if its disclosure would, or would be likely to, inhibit substantially the commissioning or imparting of advice, or the requesting or offering of opinions or views. Section 30(b)(ii) states that information is exempt information if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.



16. As the Commissioner has said in previous decisions, it is his view that the standard to be met in applying the tests contained in section 30(b)(ii) is high. In applying this exemption, the chief consideration is not whether the information constitutes opinion or views, but whether the release of the information would, or would be likely to, inhibit substantially the future free and frank exchange of views for the purposes of deliberation. In *Decision 105/2008 Mr Rob Edwards and the Scottish Ministers* (building on previous relevant decisions) the Commissioner sets out his views on the key issues that should be considered in deciding whether the exemptions in section 30(b)(i) and (ii) can apply. These can be summarised as follows:
- information must be treated on a case-by-case basis: release of information in one case need not imply release in another case
  - the nature and content of the information in question must be considered, rather than considering "advice" or "exchange of views" as categories of information
  - if the information withheld does not in itself constitute advice or an exchange of views, the argument for exemption under section 30(b) may be weaker.
17. The term "inhibit" is not defined in FOISA. However, the Commissioner takes the view that in the context of these exemptions it means to restrain, decrease or suppress the freedom with which opinions or options are expressed. The inhibition must be substantial, in other words of real and demonstrable significance.
18. Where an authority seeks to exempt information under section 30(b)(ii), it must be able to demonstrate that there is a real risk or likelihood that substantial inhibition would (or would be likely to) follow disclosure of the information. The authority will be expected to be specific about the inhibition in question and give the reasons for expecting it to occur in the near or foreseeable future. If there is only a remote or hypothetical possibility of substantial inhibition, then the exemption will not apply.
19. The Council pointed out that the majority of the minutes had been released, with only some information redacted. The redacted information, it explained, related to work which was not yet complete but which it anticipated would eventually be released into the public domain, although no final date for this had been agreed.
20. The Council submitted that it was concerned that the minutes did not do justice to the discussion of the Group. Reading them in isolation, the Council argued, could give a misleading impression of what was discussed at a Group meeting, or how it was discussed. In addition, the Council argued that the minutes could also give the impression that a comment was a decision and/or Council policy when it was not.
21. The Council argued that the content of the redacted information was highly controversial and emotive in that it dealt with the implications and repercussions of under age sexual activity. It felt strongly that should the information be disclosed it would have the potential to be extremely detrimental to the workings of the Group and the ultimate policies of the Council and thereafter ultimately the young people of the city and the families involved.



22. The Council submitted that great care was taken in handling the subject matter of the Group and it strongly contended that should the redacted information be released in its minuted form it might be open to misinterpretation. It suggested that the wording used in formal Council policy might be phrased more appropriately to the sensitive nature of the information when and if it became formal Council policy, whereas the minuted wording of the Group reflected the free and frank discussions of the various public authority officers. Disclosure of the information in its minuted form would, it was argued, be detrimental to certain sensitive ongoing working relationships.
23. In the Council's opinion, the gravity of the withheld information could not be over-emphasised. Ultimately, the Council argued, a policy would be formulated and adopted, but in the process of reaching this many ideas would be aired by the participating officers, discussed and then discarded before a final decision was made by Council officials.
24. The Council explained that many of the officers narrated to the Group their experiences and findings in working with young people and were of the view that should their discussions be released this would inhibit substantially the work they carried out in various locations within the city with vulnerable and marginalised individuals. Without providing any specific evidence, the Council stated that there had been previous instances of which officers had been made aware in which information had been released and interpreted to the detriment of similar ongoing work in other areas of the country.
25. Firstly, the Commissioner acknowledges that the Group, by its nature, considers matters of considerable sensitivity, in areas where it is important to maintain the confidence of individuals and other groups worked with if strategies to support vulnerable individuals are to be successful. It is dealing with matters on which certain interest groups (with which the Council and other key stakeholders may require to deal) hold strong views, which may be difficult to reconcile. That is not, however, the same as saying that the withheld information is itself of such sensitivity, or for that matter that its disclosure would necessarily prejudice substantially, or be likely to prejudice substantially, the free and frank exchange of views for the purposes of deliberation.
26. As indicated above, any determination of whether the section 30(b)(ii) exemption applies in a particular case will require consideration of the nature and content of the specific information withheld. The Commissioner has therefore considered each redaction in turn, alongside the Council's reasoning for its redaction.
27. Having considered the Council's redactions, the Commissioner notes that much of the information in question is factual (and sometimes simply administrative) in nature. Not all of it could be said to represent exchanges of views. While the Council is clearly concerned about the tone and manner in which the information is recorded, the information at issue here is recorded in a generally non-contentious manner, at a relatively high level and with very little by way of detailed coverage of deliberations. Information regarding places and persons is noticeably absent. Views are not generally attributed to particular individuals or groups,



28. The Council has not provided any substantive information as to the sensitivity of this particular information or of the specific nature of the harm which would or would be likely to occur if it was disclosed. Bearing all of this in mind, and taking a reasonable view of the context, it would not appear likely that that harm to the exchange between particular individuals or groups, or relationships between them, would follow from disclosure.
29. While the Commissioner acknowledges that aspects of policy in this area are the subject of ongoing development, the process of development appears to be continuous. From time to time, however, it is clear that settled conclusions are reached on certain matters and outcomes derived from these. In any event, the Commissioner must take into account the age of the withheld information, which in a number of cases was created in excess of three or four years before the applicant's request for information. In general, the passage of time tends to erode the sensitivity of information and the Commissioner takes the view that this applies in this case.
30. The Commissioner notes the Council's concerns as to information being taken out of context and thus being open to misinterpretation. However, as he has made clear on many occasions in the past when considering section 30(b) of FOISA, this is not itself a reason for upholding either of the exemptions in that section. In any event, it is always open to a public authority in releasing information to provide supporting comment or explanation with a view to addressing or mitigating the risk of misinterpretation.
31. In all of the circumstances of this case, therefore, the Commissioner is not persuaded by the Council's arguments that the disclosure of any of the withheld information would, or would be likely to, prejudice substantially the free and frank exchange of views for the purposes of deliberation. Consequently, he cannot accept that any of it is (or was at the time the Council dealt with Mrs Cleere-Martin's request) exempt under section 30(b)(ii) of FOISA. As a result, he is not required to go on to consider the application of the public interest test in the context of this exemption.

### **Section 38(1)(b) – personal information**

32. The exemption under section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), provides that information is exempt information if it constitutes personal data (as defined in section 1(1) of the DPA) and its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles contained in the DPA. This is an absolute exemption and therefore is not subject to the public interest test laid down by section 2(1)(b) of FOISA.
33. In order for a public authority to rely on this exemption, it must show firstly that the information which has been requested is personal data for the purposes of the DPA, and secondly that disclosure of the information would contravene at least one of the data protection principles laid down in the DPA.



34. In response to Mrs Cleere-Martin's request for review, the Council supplied the names of individuals who were identified in the minutes and who had consented to the release of their names. However, the Council upheld its reliance on section 38(1)(b) to withhold the remaining names, citing the first data protection principle.
35. The Council submitted that although not all of those individuals who had not agreed to the release of their names were officers of the Council, it was of the view that to release their names without consent would be a breach of confidence. The Council explained that certain of the officers concerned had set out in writing that they did not wish the Council to disclose the information as this processing was likely to cause distress. Others, it advised, had changed employer and could no longer be contacted.
36. The Council submitted that it had considered the terms of Schedule 2 to the DPA, being conditions relevant for the processing of any personal data, and concluded only condition 6 was relevant in this case. In the circumstances, it was not satisfied that this condition could be met.

***Is the information personal data?***

37. When considering the exemption in section 38(1)(b) of FOISA, the Commissioner must first establish whether the information withheld is personal data. 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 (the definition is set out in full in the Appendix).
38. Looking first at the lists of those attending the meetings in question and submitting their apologies, the Commissioner cannot accept that this information is the personal data of the individuals listed. While those individuals can be identified from this information, it indicates nothing about them beyond their casual connection with particular meetings held on particular dates. By itself, the information says nothing about the respective individuals' involvement in the meetings in question. In the circumstances, noting his conclusions in respect of similar information in *Decision 050/2009 Ecas Limited and City of Edinburgh Council*, the Commissioner cannot accept that that this information could be said to "relate to" the individuals in question and therefore must conclude that it is not their personal data.
39. The Commissioner is satisfied, however, that the remaining information redacted from these documents under section 38(1)(b) of FOISA is personal data. This information takes the form of references to the individuals in question in the text of the minutes: the individuals can be identified from these references, read along with the attendance lists referred to in paragraph 38 above. The references clearly associate them with specific aspects of the work of the Group and in the circumstances the Commissioner accepts that they focus on and are significantly biographical of those individuals. Consequently, he accepts that the information relates to them.





***Would disclosure breach the first data protection principle?***

40. As noted above, the Council argued that disclosure in this case would breach the first data protection principle.
41. The first data protection principle requires that the processing of personal data (here, the disclosure of data in response to a request made under FOISA) must be fair and lawful and, in particular, that personal data shall not be processed unless at least one of the conditions in Schedule 2 (to the DPA) is met. For sensitive personal data, one of the conditions in Schedule 3 to the DPA must also be met. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA, and he is satisfied that the personal data in this case does not fall into this category. It is therefore not necessary to consider the conditions in Schedule 3 in this case.
42. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. If there is a specific condition which permits the personal data to be disclosed, it is likely (although other issues may also be relevant, depending on the circumstances) that the disclosure will also be fair and lawful.
43. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed and whether the disclosure of this personal data would be fair and lawful.

***Can any of the conditions in Schedule 2 of the DPA be met?***

44. The Council has argued that of all the conditions in Schedule 2 of the DPA, only the sixth might permit disclosure of the personal data in this case.
45. The Commissioner has considered all of the conditions in Schedule 2 of the DPA, and shares the view that condition 6 is the only one which might be considered to apply in this case. Condition 6 allows personal data to be processed (in this case, disclosed in response to an information request made under section 1(1) of FOISA) if the processing is necessary for the purposes of legitimate interests pursued 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 different tests which must be satisfied before condition 6 can be met. These are:
  - a. Does the applicant have a legitimate interest in obtaining this personal data?
  - b. If yes, is the disclosure necessary to achieve these legitimate interests? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate interests be achieved by means which interfere less with the privacy of the data subject?
  - c. Even if the processing is necessary for the legitimate purposes of the applicant, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or



legitimate interests of the data subject? This will involve a balancing exercise between the legitimate interests of the applicant and those of the data subject. Only if (or to the extent that) the legitimate interests of the applicant outweigh those of the data subject can the personal data be disclosed.

***Does the applicant have a legitimate interest?***

47. Within her application to the Commissioner, Mrs Cleere-Martin argued that Council employees or attendees of these meetings should not be able to claim anonymity when conducting public Council business of this nature, which she submitted should be conducted for the common good.
48. The Council submitted that it did not consider Mrs Cleere-Martin to have a legitimate interest in receiving the redacted information. It argued that disclosure of the redacted information was not necessary to achieve any legitimate aims. It did not consider the redacted information to not add to the overall understanding of any person reading the minutes, contending that to release the redacted portions would be disproportionate and unnecessary in satisfying Mrs Cleere-Martin's request. By releasing the majority of the minutes, the Council believed itself to have satisfied the request.
49. The Commissioner is satisfied that there is a general legitimate interest in ensuring transparency in and scrutiny of the decision-making process, which extends to those involved in that process.

***Is disclosure of the information necessary to achieve those legitimate interests?***

50. The Commissioner must now consider whether disclosure is necessary for those legitimate interests. Having accepted Mrs Cleere-Martin's legitimate interest in receiving the redacted information, the Commissioner is satisfied that disclosure is proportionate and that Mrs Cleere-Martin's aims could not be achieved by any other means which would interfere less with the privacy of individuals in question.

***Would disclosure cause unwarranted prejudice to the legitimate interests of the data subject?***

51. The Commissioner must now consider whether disclosure would nevertheless cause unwarranted prejudice to the rights, freedoms and legitimate interests of the individuals identified in the redacted information. As noted above, this requires a balancing exercise between the legitimate interests of Mrs Cleere-Martin and the individuals in question. Only if the legitimate interests of Mrs Cleere-Martin outweigh those of the individuals in question can the information be disclosed without breaching the first data protection principle.
52. In the Commissioner's briefing on section 38 of FOISA, the Commissioner notes a number of factors which should be taken into account in carrying out this balancing exercise. These include:
  - a) whether the information relates to the 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).



- b) the potential harm or distress that may be caused by the disclosure.
- c) whether the individual has objected to the disclosure
- d) the reasonable expectations of the individuals as to whether the information would be disclosed.

53. The Commissioner has also taken into account guidance from the (UK) Information Commissioner, which advises that where personal data relates to an individual's public function rather than their private life, it is relevant to consider their seniority when deciding whether the information should be disclosed.
54. The Council submitted that fairness in processing might take into account such issues as the expectation of the data subject. It explained that the officers in question had no expectation that their names would be released into the public domain when they joined the Group, as it was set up as an inter-authority discussion group with the remit of debating and formulating ideas which would then be drafted and presented to Council officials and the NHS Board for their discussion, approval or rejection.
55. The Council advised that it also considered whether any distress or damage could be caused to the data subjects. It explained that members of the Group were also involved in certain other areas of sensitivity. Given the emotive and sensitive nature of the subjects involved, the Council submitted that the members could be targeted by other individuals and/or pressure groups who opposed work in these areas.
56. Without being specific, the Council explained that it had on previous occasions released personal data of officers on a related matter. This, the Council explained, resulted in officers being contacted directly by members of the public, and while the content of the contact had not been strictly abusive it had caused distress to those officers. In the circumstances, it was concerned that disclosure in such a sensitive area might have a detrimental effect on both the professional and private lives of the individuals concerned.
57. Having balanced the legitimate interests of the data subjects against the legitimate interests identified by Mrs Cleere-Martin, the Commissioner has concluded that disclosure would be unwarranted in this case. In reaching this conclusion, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects in relation to it, their express refusal in many cases to consent to disclosure and the potential distress disclosure could cause. While more specific evidence on this last point would no doubt have made the position clearer, the Commissioner accepts as a consideration of some relevance the possibility that association of individuals with specific aspects of the work of the Group might lead to distressing contact from those opposed to work of that particular kind.
58. In all the circumstances, the Commissioner is satisfied that Condition 6 of Schedule 2 is not met in this case. For the same reasons, the Commissioner has concluded that disclosure would be unfair and, in breaching the first data protection principle, unlawful.



59. Consequently, the Commissioner finds that the redacted information (i.e. the redacted references to individuals in the text of the minutes) is exempt from disclosure under section 38(1)(b) of FOISA. However, having found that the lists of attendees and those submitting apologies do not comprise personal data, he cannot accept that section 38(1)(b) applies to them. No other exemption in FOISA having been applied to the information in these lists, he must require its disclosure.

### **Recent Court of Session Opinion**

60. The Commissioner notes that the information request by Mrs Cleere-Martin was for copies of minutes of meetings. In the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA provides a right to information, not documents. However, the Court also said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
61. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mrs Cleere-Martin and the Council that the Council questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which the Council has subsequently had with the Commissioner that the Council was unclear as to what the information requested sought.
62. The Commissioner is satisfied that the request is reasonably clear and that the information request is therefore valid.



## DECISION

The Commissioner finds that Glasgow City Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs Teresa Cleere-Martin.

The Commissioner finds that by withholding the personal data of certain individuals under section 38(1)(b) of FOISA, the Council complied with Part 1.

However, by incorrectly applying section 30(b)(ii) to substantive redactions made to the minutes, and section 38(1)(b) to the lists of those attending the meetings and submitting their apologies, the Council failed to comply with Part 1, and in particular section 1(1), of FOISA.

The Commissioner therefore requires the Council to supply Mrs Cleere-Martin with the information contained in the minutes in question, subject to the redaction of certain personal data (as described in paragraph 39 above), by 21 December 2009.

## Appeal

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Should either Mrs Cleere-Martin or Glasgow City Council wish to appeal against this 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 after the date of intimation of this decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**4 November 2009**



## Appendix

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### 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.
- (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

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.

...