

Decision Notice



Decision 128/2009 Mr James Elder and East Lothian Council

Admissions at a named care home

Reference No: 200900169

Decision Date: 4 November 2009

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Mr Elder requested from East Lothian Council (the Council) documentation relating to the review of admissions at a named care home. The Council, responded by providing him with certain information subject to redaction under sections 30(b) and 38(1)(b) of FOISA. Following a review, Mr Elder remained dissatisfied and applied to the Commissioner for a decision in respect of the redactions under section 30(b) and the Council's handling of the request.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Mr Elder's request for information in accordance with Part 1 of FOISA, by incorrectly applying sections 30(b) and 38(1)(b) of FOISA to some of the information withheld. By failing to respond to Mr Elder within 20 working days, the Council failed to comply with section 10(1) of FOISA. However, he also found that the Council was correct in its application of section 30(b) to certain of the information withheld. He required the Council to supply Mr Elder with the information he did not find exempt under section 30(b) or section 38(1)(b) of FOISA.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2 (Effect of exemptions); 10 (Time for compliance); 15 (Duty to provide advice and assistance); 30(b) (Prejudice to effective conduct of public affairs); and 38(1)(b), (2) and (5) (Personal information).

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of personal data).

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

1. On 31 October 2008, Mr Elder wrote to the Council requesting information relating to a review of admissions at a named care home, including copies of all correspondence, documentation and minutes of meetings/discussions, the "review structure document" and the names, positions and organisations of all people involved.



2. Further to this request, on 25 November 2008, Mr Elder wrote to the Council requesting all correspondence between the Council, a named care provider and the Care Commission relating to the number of new admissions which should have taken place at the named care home over a specified period.
3. The Council responded on 27 November 2008. In this response, the Council explained that no formal review had taken place regarding admissions at the named care home, providing an explanation as to why this was the case.
4. On 1 December 2008, referring to his 31 October request, Mr Elder requested all documentation pertaining to the review referred to in paragraph 1 above, whether that review was formal or informal.
5. On 12 January 2009, Mr Elder wrote to the Council requesting a review of its handling his requests of 25 November 2008 and 1 December 2008. In particular, Mr Elder was not satisfied that the Council had adequately addressed his request of 25 November 2008, or responded to his request of 1 December 2008, within the required timescales.
6. The Council notified Mr Elder of the outcome of its review on 16 January 2009. In this response the Council supplied Mr Elder with information which it considered to fall within the scope of his requests, subject to redaction under sections 38(1)(b) and 30(b) of FOISA. The Council also explained to Mr Elder why it did not hold some of the information sought by him.
7. On 23 January 2009, Mr Elder wrote to the Commissioner, stating that he 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. He challenged the Council's application of section 30(b) of FOISA (while accepting the redaction of residents' personal data under section 38(1)(b)), indicating in addition that he believed there to be a considerable amount of additional relevant information with which he had not been provided and expressing his dissatisfaction with the manner in which information had been redacted.
8. The application was validated by establishing that Mr Elder 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

9. On 20 February 2009, the Council was notified in writing that an application had been received from Mr Elder and asked to provide the Commissioner with any information withheld from him. The Council responded with the information it understood to fall within the scope of Mr Elder's request and the case was then allocated to an investigating officer.



10. 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. It was also asked to explain its handling of Mr Elder's request and why it considered certain information identified by Mr Elder to fall outwith the scope of the request.
11. During the course of the investigation the Council supplied Mr Elder with further information he had identified as falling within the scope of his request, subject to the redaction of certain information. Mr Elder was dissatisfied with these redactions, on the basis that the redacted information might be relevant to the issues he was concerned about. The Commissioner will consider these below, but not the information originally withheld but released to Mr Elder in the course of the investigation.

Commissioner's analysis and findings

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 Mr Elder and the Council and is satisfied that no matter of relevance has been overlooked.
13. Within his application, Mr Elder's concerns fall into three distinct categories:
 - The redaction of the information supplied
 - The adequacy of searches undertaken by the Council and its interpretation of his request
 - The Council's handling of his request

The redaction of information supplied

14. The Council supplied information to Mr Elder subject to redactions. These redactions were made on the basis that sections 38(1)(b)(personal information) and 30(b) of FOISA applied. Mr Elder was not concerned with the Council's application of section 38(1)(b) of FOISA in relation to the personal data of residents at the care home and the Commissioner is satisfied, with the exception of one sentence contained within the minute of 5 February 2008, that the information withheld under section 38(1)(b) all falls into that category. The Commissioner will therefore only consider this exemption in relation to that one sentence.



Section 38(1)(b) – Personal data

15. Section 38(1)(b), read in conjunction with either section 38(2)(a)(i) or (2)(b) (as appropriate), provides that information is exempt information if it constitutes personal data (as defined in section 1(1) of the DPA) and if 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.
16. Personal data is 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 the Appendix).
17. The Council submitted that the information contained in the sentence under consideration referred to ongoing adult protection issues, the Council believing it amounts to personal data because of the small number of residents involved. Having carefully considered the information in question, and having received no further clarification as to *how* the residents in question might be identified, the Commissioner is not satisfied that it falls within the definition of personal data. The information is a general statement relating to the development of staff training and does not identify individuals or refer to them even when read in context. It is not evident how it might be used to identify individual residents along with other information. Having determined that the information is not personal data, the Commissioner does not accept the Council's application to it of section 38(1)(b) of FOISA. The Commissioner therefore concludes that the Council was incorrect in its application of section 38(1)(b) of FOISA to this information.
18. The Council has also applied section 30(b) of FOISA to the information withheld from Mr Elder, including the sentence referred to above in the context of section 38(1)(b).

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

19. In order for the Council to be able to rely on the exemptions laid down in section 30(b)(i) or 30(b)(ii) of FOISA, it would have to show that the disclosure of the information under FOISA would, or would be likely to, inhibit substantially (i) the free and frank provision of advice or (ii) the free and frank exchange of views for the purposes of deliberation, respectively.
20. As the Commissioner has said in previous decisions, it is his view that the standard to be met in applying the tests contained in sections 30(b)(i) and 30(b)(ii) is high. In applying these exemptions, the chief consideration is not whether the information constitutes advice or opinion, but whether the release of the information would, or would be likely to, inhibit substantially (as the case may be) the provision of advice or the exchange of views. The Scottish Ministers' guidance to their staff on the application of section 30(b) points out that the word "inhibit" suggests a suppressive effect, so that communication would be less likely, more reticent or less inclusive. The word "substantial" is also important: for the exemption to apply, the inhibition would require to be of real and demonstrable significance.



21. In applying these exemptions, the Commissioner looks for authorities demonstrating a real risk or likelihood that actual inhibition will occur at some time in the near (certainly foreseeable) future, not simply that inhibition is a remote or hypothetical possibility. Each request should be considered on a case by case basis, taking into account the effects anticipated from the release of the particular information involved. The content of the withheld information will require to be considered, taking into account factors such as its nature, subject matter, manner of expression and whether the timing of disclosure would have any bearing: releasing advice or views whilst a decision was being considered, and for which further views were still being sought, for example, would be likely to be more substantially inhibiting than once advice had been taken.
22. The Council explained that the information requested by Mr Elder related to an emergency situation involving the closure of a nursing home. The Council submitted that ensuring the welfare of the vulnerable residents in the home was the absolute priority for all involved. Multi-agency strategy meetings (involving the Police, Council, Care Commission, care home staff and voluntary organisations) had been held during this time to discuss the situation surrounding the home closure. The Council explained that such meetings were essential in ensuring that any adult or child protection issues could be effectively addressed. The free and frank provision of advice and open disclosure of information and opinions between agencies, was, the Council argued, an essential part of making sure that appropriate action could be taken to protect vulnerable adults and that all appropriate agencies could effectively work together.
23. The Council explained that in these particular circumstances, staff members were sharing private sensitive information about residents, offering suggestions and potential solutions for discussion without the approval of senior management and disclosing information about ongoing adult protection issues which could have been the subject of further action. The information in question, the Council submitted, was relevant to the time it was discussed and could be damaging to individuals or organisations concerned if released out of context.
24. The Council explained that the exemption was applied to some of the withheld information as disclosure could, it argued, in future inhibit agencies discussing these types of issues in the free and open manner necessary to ensure that the welfare of vulnerable adults was protected and that all agencies had access to necessary information in order to take any appropriate action required.
25. Following further disclosures to Mr Elder during the course of the investigation there remained 3 documents subject to redaction under section 30(b)(i) or (ii) of FOISA.

Minute of 4 February 2008

26. The Council applied section 30(b)(ii) to the redactions made to this document. The Council submitted that the redactions made on page 2 reflected personal views put forward on lease arrangements and equipment purchase. In respect of the redactions made to pages 3 and 4, the Council submitted that these reflected speculation on various issues.



27. The issue to be considered is whether the effect of disclosure would be adverse by way of causing, or being likely to cause, the individuals to be substantially inhibited in the free and frank exchange of views for the purposes of deliberation. If, on the other hand, the effect of disclosure was simply to increase the care given when offering views to ensure they were justifiable and measured, and provided an accurate representation of the issues under consideration, then substantial inhibition would be unlikely. The Commissioner has recognised in previous decisions the possibility that information being released under FOISA could also have a positive effect, by ensuring that options are considered in an accurate and measured way, concerns not overstated, and overall that advice and views are expressed as a reasonable representation of the issues which need to be addressed.
28. With the exception of the second paragraph under the heading “Communications” on the last page of this document, the Commissioner is not persuaded by the Council’s application of section 30(b)(ii) to the redactions made to this document. Given that he does not accept that this information was properly withheld under section 30(b)(ii), and given that no other exemptions have been applied to this information, he must require its release.
29. Although recognising the sensitivity of the subject matter and the urgency within which these meetings took place, the Commissioner considers that the redactions in question (with the one exception identified) merely reflect a full exploration of the options available and therefore a true reflection of the decision-making process. The Commissioner is not satisfied, having taken account of the nature of the views expressed and the status of those making these statements, that these redactions would or would be likely to substantially inhibit the free and frank exchange of views for the purposes of deliberation. However, the Commissioner is satisfied that the Council was correct in its application of section 30(b)(ii) to the second paragraph contained under the heading “Communications”. In this case, the Commissioner accepts that the substantive content of the redaction (as opposed to the manner in which it is expressed) has been correctly withheld by the Council. He is satisfied that this information represents a frank exchange of views which if disclosed could harm the Council’s relations with external organisations with which it requires to maintain effective working arrangements. The Commissioner therefore concludes that the Council was entitled to withhold these comments, on the basis that their disclosure would substantially inhibit future such exchanges. Having found that the Council was correct in its application of section 30(b)(ii) to this paragraph, the Commissioner is required to go on and consider the public interest test, which he will do below



Minute of 5 February 2008

30. The Council applied section 30(b)(i) to the redactions made to this document, including the sentence considered above in the context of section 38(1)(b). Having reviewed the remaining redactions made to this document, the Commissioner is satisfied that the Council was correct in its application of section 30(b)(i). In reaching this conclusion, the Commissioner has taken account of the circumstances in which these exchanges took place and recognises the urgency with which the matters under consideration required to be addressed. The redactions in question reflect consideration of specific adult protection issues, albeit not in relation to particular identifiable individuals, which were clearly of pressing concern (or at least some sensitivity) at the time. The Commissioner is satisfied, given the nature and sensitivity of the statements in question, that their disclosure would, or would be likely to, inhibit substantially future such exchanges and hinder the prompt consideration and resolution of such issues. He is therefore required to consider the application of the public interest test, which he will do below.

Minute of 11 April 2008

31. The Council redacted information from the minute of 11 April 2008 on the basis that sections 30(b)(i) (and in one case also section 30(b)(ii)) applied. The Council stated that these redactions related to adult protection issues. The Commissioner has reviewed the information in question and is satisfied that it relates to adult protection issues and records incidents (and issues arising from incidents) which have given rise to concerns requiring urgent attention. The Commissioner has noted that the majority of the information redacted from these documents is in a form akin to witness statements, and given the nature of the redacted information is satisfied that the Council was correct to apply to it the exemptions in section 30(b) it has claimed. It is his opinion that disclosure of this information would, or would be likely to, inhibit substantially the frankness with which accounts of this nature were provided and recorded in future. He is therefore required to consider the application of the public interest test.

Public interest test

32. As the Commissioner has determined that the Council was correct in its application of section 30(b)(i) or 30(b)(ii) to the second paragraph under the heading "Communications" in the minute of 4 February 2008, the redactions made to the minute of 5 February 2008 and the redactions made to the minute of 11 April 2008, he is required to go on and consider the public interest test in section 2(1)(b) of FOISA. This involves assessing whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information.



33. While neither party submitted any specific arguments in relation to the public interest test, the Commissioner recognises that there is a general public interest in making information available to the public and a general need for transparency and accountability in decision making. However, this must be balanced against any detriment to the public interest as a consequence of disclosure. As noted above, exempt information is only required to be released under FOISA where the public interest in disclosure is not outweighed by the public interest in maintaining the relevant exemption (i.e. in withholding the information).
34. The Commissioner notes that the information in question reflects discussion of specific issues, which he accepts remained of some sensitivity at the time the Council dealt with Mr Elder's request for information and his request for review. Given the context in which the information was exchanged, and the importance to the delivery of appropriate services to vulnerable adults that it was so exchanged at the relevant time, the Commissioner has concluded that the public interest in disclosure of that information is outweighed by that in maintaining the exemptions.
35. Therefore, the Commissioner concludes that the Council acted in accordance with Part 1 of FOISA by withholding the information detailed in paragraph 33 above in terms of section 30(b)(i) and (ii).

Adequacy of the searches undertaken and the interpretation of Mr Elder's request

36. Within his application to the Commissioner, Mr Elder raised concerns relating to the adequacy of the searches undertaken by the Council and its interpretation of his request. Primarily, Mr Elder believed more information fell within the scope of his request than that identified by the Council, referring in particular to minutes of certain meetings.
37. In relation to the searches undertaken, the Council advised that the Head of Adult Social Care at the time of the events in question had since retired but that a full search of relevant electronic and paper files was undertaken by a social work service manager involved in those events. The Executive Director of Community Services was also consulted to see whether they had, or had any knowledge of, or access to, further information. The Council argued that since these were the individuals directly involved in the situation, they would be best placed to have access to any recorded information.
38. In addition, the Council explained that the closure of a particular nursing home (from which the events Mr Elder was concerned about had arisen) was an emergency situation that required joint working. This meant that a lot of information was shared at multi-agency strategy meetings, and so was recorded in meeting minutes. The Council stated that Mr Elder was appropriately referred to other agencies if it was felt that they could have access to information he was requesting.
39. However, in preparation for submissions to the Commissioner's office, the search carried out by the Council brought to light five additional documents which the Council accepted were relevant to Mr Elder's request. These documents were supplied to Mr Elder during the course of the investigation, with certain information redacted.



40. Having considered the extent of the searches undertaken by the Council (including that undertaken in response to this investigation), and noting the confusion that may have been caused by extensive correspondence received from Mr Elder (see below), the Commissioner is satisfied in the circumstances that the Council has taken adequate steps to locate any information held by it and falling within the scope of this particular request made by Mr Elder.
41. Responding to the concerns raised by Mr Elder in relation to the interpretation of his request, the Council explained that it did not hold recorded information on some of the meetings he had mentioned in his correspondence with it. The Council also provided some background to its understanding of Mr Elder's request and highlighted the high volume of correspondence that Mr Elder had submitted to the Council, following on from an intensive exchange of correspondence with the Council at the time of the home closure.
42. From copy correspondence provided to the Commissioner's office, it is clear that a great deal of correspondence has been exchanged between the Council and Mr Elder. The Council submitted that the volume and nature of Mr Elder's correspondence made it extremely difficult for officers to keep track of the number of requests and response deadlines. Despite this, the Council submitted, officers always attempted to provide Mr Elder with the information he sought and every effort was made to keep him well informed. The Commissioner accepts that the nature and volume of correspondence between Mr Elder and the Council could have led to confusion as to what information was encompassed by each request.
43. In relation to this particular request, the Council argued that Mr Elder sought information specifically about the decision to move residents to a particular care home, rather than the wider issue related to the closure of another named nursing home and the movement of residents in general.
44. Having considered Mr Elder's requests, the Commissioner is satisfied that those requests under consideration in this case related to admissions at a specific care home and not to wider issues from which those admissions may have arisen. The Commissioner is therefore satisfied that the Council interpreted Mr Elder's request appropriately in the circumstances.

Handling of request

45. Within his application to this office, Mr Elder raised concerns relating to the manner in which his request was handled. Mr Elder was specifically concerned with the time taken to respond to his requests and the manner in which information was redacted.
46. With regard to the time taken to respond to Mr Elder's request, section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to exceptions which are not relevant in this case.
47. The Council acknowledged that the response to Mr Elder's requests was provided outwith the prescribed timescale and highlighted that an apology had been provided to Mr Elder both in the response itself and also by the Chief Executive in an email dated 12 January 2009.



48. The Council submitted that the delay was due to the complexity of Mr Elder's requests and the fact that the Council closed for a two week period over Christmas and New Year.
49. Having reviewed the dates in question, the Commissioner finds that the Council failed to respond to Mr Elder's requests within the 20 working days allowed by section 10(1) of FOISA. While noting the Council's submissions in this regard, the Commissioner must point out that these timescales are absolute (subject only to very limited exceptions: the full text of section 10 is set out in the Appendix below) and, in this case at least, were not susceptible to extension.
50. In relation to the material withheld, Mr Elder submitted that the Council had been incorrect to physically delete information rather than blacking it out. The Commissioner can find no basis for preferring one method of redaction to another. He would, however, consider it good practice, and consistent with a Scottish public authority's duty to provide applicants with reasonable advice in terms of section 15 of FOISA, for redactions to be made in such a way as to give the applicant a reasonable understanding of how much information has been withheld: in this case, having considered the redacted documents and compared them with the full versions, he is satisfied that this was done.

Recent Court of Session Opinion

51. The Commissioner notes that the information request by Mr Elder was for copies of documents. 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 gives 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.
52. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr Elder 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.
53. The Commissioner is satisfied that the request is reasonably clear and that the information request is therefore valid.



DECISION

The Commissioner finds that East Lothian 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 Mr Elder.

The Commissioner finds that by correctly applying (as appropriate) section 30(b)(i) and/or section 30(b)(ii) to the second paragraph under the heading “Communications” in the minute of 4 February 2008, and to the redactions made to the minutes of 5 February and 11 April 2008, the Council complied with Part 1.

However, by incorrectly applying section 30(b)(ii) to the remainder of the minute of 4 February 2008 and failing to respond to Mr Elder’s requests within 20 working days as set out in section 10(1), the Council failed to comply with Part 1 of FOISA.

The Commissioner also finds that the Council was incorrect in its application of section 38(1)(b) in relation to one sentence withheld from the minute of 5 February 2008

The Commissioner requires the Council to release to Mr Elder the remainder of the information contained in the minute of 4 February 2008 (i.e. excluding the second sentence under the heading “Communications”), by 21 December 2009.

Appeal

Should either Mr Elder or the 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

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.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or



- (b) in a case where section 1(3) applies, the receipt by it of the further information.
- (2) If-
 - (a) the authority is the Keeper of the Records of Scotland; and
 - (b) the information is information to which section 22(2) to (5) applies,
subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) Where the authority gives a fees notice to the applicant and the fee is duly paid, the working days in the period-
 - (a) beginning with the day on which that notice is given; and
 - (b) ending with the day on which the fee is received by the authority,are to be disregarded in calculating, for the purposes of subsection (1), the twentieth (or as the case may be the thirtieth) working day mentioned in that subsection.
- (4) The Scottish Ministers may by regulations provide that subsections (1) and (3) are to have effect as if references to the twentieth (or as the case may be the thirtieth) working day were references to such other working day, not later than the sixtieth, after receipt by the authority of the request as is specified in, or determined in accordance with, the regulations.
- (5) Regulations under subsection (4) may-
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner, exercisable both at the request of the authority and where no such request has been made.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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-
 - (i) the free and frank provision of advice; or
 - (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-

...

"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;

...