

Decision Notice



Decision 124/2010 Dr Sandy Spowart and the Scottish Ministers

SMART: SCOTLAND Grants

Reference No: 200901637
Decision Date: 14 July 2009

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Dr Spowart requested from the Scottish Ministers (the Ministers) information relating to SMART: SCOTLAND grants. The Ministers responded by providing some of the information requested whilst withholding other information under sections 33(1)(b) (Commercial interests and the economy) and section 38(1)(b) (Personal information) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, during which the Ministers also argued that the information was exempt under section 36(2) (Confidentiality), Dr Spowart remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which further information was disclosed to Dr Spowart, the Commissioner found that the Ministers were entitled to withhold the remaining information under the exemptions in sections 36(2) and 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(1), (2)(c) and (e)(ii) (Effect of exemptions); 36(2) (Confidentiality) and 38(1)(b), (2)(a)(i), (2)(b) and (5) (definitions of “data protection principles”, “data subject” and “personal data”) (Personal information)

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions) (definition of “personal data”); Schedule 1 (The data protection principles, Part I: The principles) (the first data protection principle) and Schedule 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

1. SMART: SCOTLAND is a Government Initiative which provides financial assistance to small and medium-sized enterprises to help support development projects which represent a significant technological advance for the UK sector or industry. SPUR grants were among the predecessors to the current SMART: SCOTLAND research and development project grants.



2. Dr Spowart was in correspondence with the Ministers in relation to various matters surrounding SMART: SCOTLAND and SPUR grants. This correspondence included aspects of a previous grant known as SPUR 06/024 and grant payments made to or applied for by two specific named companies.
3. On 5 June 2009, Dr Spowart wrote to the Ministers requesting the following information:
 - a. *Has SPUR 06/024 been cancelled? If not, why not?*
 - b. *Have any claims for payment under 06/024 been received or paid since 1 January 2009 by either of the above Companies?*
 - c. *Have either of the above Companies submitted any proposals for SMART or SPUR grants since 1 January 2009 on any topic other than that covered by SPUR 06/024?*
 - d. *Have any applications been received for public funds from any Company whose directors include [two named individuals] other than those under SPUR 06/024?*
4. The Ministers responded to Dr Spowart's four requests on 1 July 2009. In relation to his request as set out at 3a above, the Ministers informed him that SPUR 06/024 had not been cancelled as it continued to meet SMART: SCOTLAND Guidelines. In relation to the request at 3d, the Ministers informed him that one funding application had been made by a specified company.
5. On 10 July 2009, Dr Spowart wrote to the Ministers requesting a review of the response he had received in relation to his request as set out at 3a above. In relation to the Ministers' response to his request at 3d, Dr Spowart made a new request for the following information about the funding application:
 - (a) *Title*
 - (b) *Abstract*
 - (c) *Funding Requested*
 - (d) *Funding Granted*
 - (e) *Partners, if any*
 - (f) *CVs of Company personnel named as being associated with the proposed project*
 - (g) *CV's of partner personnel associated with the proposed project*
 - (h) *CVs of any external consultants involved in the proposal or the subsequent project*
 - (i) *CV's of Scottish Innovation Grants staff involved with this proposed R&D project and the nature of their involvement.*
6. The Ministers responded on 31 July 2009 and provided information in relation to those parts of his request set out at 5a, 5b and 5e above. In relation to those parts of his request at 5c and 5d, the Ministers withheld information under section 33(1)(b) (Commercial interests and the environment) of FOISA, while with regard to those parts at 5f to 5i it stated that information was being withheld as personal information in terms of section 38(1)(b).



7. On 11 August 2009, Dr Spowart wrote to the Ministers requesting a review of their decision in relation to withholding the information referred to in the previous paragraph. In particular, Dr Spowart drew the Ministers attention to his opinion that the information should be released in the public interest.
8. On 28 August 2009, the Ministers notified Dr Spowart of the outcome of their review in relation to his request for information as set out at 3a above. The Ministers confirmed that Dr Spowart had been given the factual information he had requested and that no information had been withheld.
9. On 8 September 2009, the Ministers notified Dr Spowart of the outcome of their review in relation to his request for review as outlined at paragraph 7 above. In relation to that part of the request set out at 5c, the Ministers maintained the decision to withhold the information in terms of 33(1)(b) and also considered that section 36(2) applied (the information having been supplied in confidence). They upheld the decision to withhold information held in relation to those parts at 5f and 5i under section 38(1)(b) of FOISA, but also informed Dr Spowart in relation to the part at 5d that no funding had been offered, and in relation to the parts at 5g and 5h that no information was held.
10. On 15 September 2009, Dr Spowart wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' reviews in relation to his requests as set out at 3a, 5c, 5f and 5i above, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
11. The application was validated by establishing that Dr Spowart had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests.

Investigation

12. On 28 September 2009, the Ministers were notified in writing that an application had been received from Dr Spowart and asked to provide the Commissioner with any information withheld from him. The Ministers responded with the information requested and the case was then allocated to an investigating officer.
13. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their reliance on any provisions of FOISA they considered applicable to the information covered by the requests as set out at paragraph 3a, 5c, 5f and 5i above, on which the investigation is based.
14. The Ministers responded to the effect that the information was withheld from Dr Spowart under various exemptions in FOISA, with reasons in support of these submissions.



15. The Ministers' and Dr Spowart's submissions, insofar as relevant, will be further considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

16. 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 Dr Spowart and the Ministers and is satisfied that no matter of relevance has been overlooked.
17. In his application to the Commissioner, Dr Spowart questioned the independence of the reviews carried out by the Ministers, given that they were dealt with by individuals from the same department as the person who initially responded to his requests. The Commissioner is satisfied, however, that the reviews were conducted in line with the Ministers' Code of Practice on the discharge of functions by public authorities under FOISA, known as the Section 60 Code, having been carried out by staff who were not involved in the original decision (see paragraph 66 of the Code).
18. Dr Spowart provided the Commissioner with various submissions regarding the viability and validity of the subject matter to which SPUR 06/024 relates. The Commissioner can take cognisance of these, however, only to the extent to which they are relevant to whether the Ministers acted in accordance with the requirements of FOISA in dealing with Dr Spowart's requests for information.
19. In relation to the request as outlined at 3a above, the Ministers contended that at the time of the request for information and at the time of the review, SPUR 06/024 had not been cancelled and explained that cancellation of grants remained an option if the terms and conditions of the Scheme were not being met. The Ministers further contended that the second part of Dr Spowart's request, "If not, why not?", was not a valid request for information under FOISA in that it asked them to speculate rather than provide recorded information. The Ministers do not consider that it is within the remit of FOISA to question the reasoning behind the support of any business through a Government run scheme.
20. The first part of Dr Spowart's request as set out at 3a above was in the form of a question, which was answered by the Ministers informing him that SPUR 06/024 had not been cancelled. Dr Spowart does not appear to challenge this part of the response. In the circumstances, the Commissioner agrees with the Ministers that the second part of the request asked them to speculate rather than provide recorded information. In the circumstances, it was not a question in respect of which they could be expected to hold recorded information. Consequently, the Commissioner is satisfied that this part of the request did not constitute a valid information request for the purposes of section 1(1) of FOISA and therefore he is not required to, and will not, comment further on the matter.



21. In relation to those parts of the information request set out at 5c, 5f and 5i above, the Ministers withheld the information contained within an application for a SMART: SCOTLAND grant and in certain CVs. The information falling within the scope of 5f is part of the application.
22. The Ministers confirmed that they were withholding the information contained within the application form under sections 30(c) (Prejudice to effective conduct of public affairs); 33(1)(b) (Commercial interests and the economy) and 36(2) (Confidentiality) of FOISA.

Section 36(2) - Confidentiality

23. Section 36(2) of FOISA provides that information is exempt if it was obtained by a Scottish public authority from another person (including another such authority) and its disclosure by the authority so obtaining it to the public (otherwise than under FOISA) would constitute a breach of confidence actionable by that person or any other person. Section 36(2) is an absolute exemption and is not, therefore, subject to the public interest test in section 2(1)(b) of FOISA. However, it is generally accepted in common law that an obligation of confidence will not be enforced to restrain the disclosure of information which is justified in the public interest (this is commonly known as "the public interest defence").
24. Section 36(2) therefore contains a two stage test, both parts of which must be fulfilled before the exemption can be relied upon. The first is that the information must have been obtained by a Scottish public authority from another person. "Person" is defined widely and means another individual, another Scottish public authority or any other legal entity, such as a company or partnership.
25. The Ministers explained that the information contained in the application had been supplied to the Ministers by another person, namely the company referred to in Dr Spowart's request. In the circumstances, the Commissioner is satisfied that the information was obtained by the Ministers from another person and that the first part of the section 36(2) test has therefore been fulfilled.
26. The second part of the test is that the disclosure of the information by the public authority must constitute a breach of confidence actionable either by the person who gave the information to the public authority or by any other person. The Commissioner takes the view that "actionable" means that the basic requirements for a successful action must appear to be fulfilled.
27. There are three main requirements which must be met before a claim for breach of confidence can be established to satisfy the second element to this test. These are:
 - a. the information must have the necessary quality of confidence;
 - b. the public authority must have received the information in circumstances which imposed an obligation on it to maintain confidentiality; and
 - c. unauthorised disclosure must be to the detriment of the person who communicated the information.



Necessary quality of confidence

28. Having considered the information requested by Dr Spowart and the arguments put forward by the Ministers, the Commissioner is satisfied that it fulfils the criteria of having the necessary quality of confidence, in that the information is not common knowledge and could not readily be obtained by Dr Spowart through any other means.

Obligation to maintain confidentiality

29. The Ministers contended that the information had been communicated under an explicit obligation of confidence, referring to the guidance provided to applicants and also to the declaration applicants are asked to sign in conjunction with the application. The declaration, in particular, explains that the information in the application will only be used by the Scottish Government for specific purposes in connection with its processing and appraisal and will not be disclosed to any other organisation except for certain limited purposes in that connection. The Ministers have advised that any sharing of information in the application is done subject to explicit confidentiality agreements.
30. The declaration also states that if the application is successful, the Ministers will publish information from certain sections of the form (3 – 18 and 20 – 22), to make potential applicants, investors, the general public and other interested parties aware of the types of SMART projects and individuals and businesses receiving SMART grants.
31. It is therefore apparent that the information was supplied to the Ministers in circumstances which imposed an obligation of confidentiality. The confidentiality in relation to sections 3 – 18 and 20 – 22, however, ceases to apply should the application be deemed successful. Given that at the time the Ministers dealt with Dr Spowart's request and request for review (and indeed at the time of this investigation) the outcome of the application had not been determined, the Ministers still had (at that point, at least) an obligation to maintain confidentiality in relation to all the information supplied.
32. Having considered the circumstances of its provision to the Ministers, therefore, the Commissioner is satisfied that the information was received by the Ministers in circumstances which imposed upon them an obligation to maintain confidentiality.

Unauthorised disclosure which would cause detriment

33. The third requirement is that unauthorised disclosure of the information must be to the detriment of the person who communicated it. The damage need not be substantial and indeed could follow from the mere fact of unauthorised use or disclosure in breach of confidence (in that respect, the test of detriment is different from establishing whether, for example, disclosure would prejudice *substantially* the commercial interests of any person when considering the exemption at section 33(1)(b) of FOISA).



34. Here, it is clear that the Ministers believe disclosure would be detrimental to the interests of the company which provided the information to them. It is also clear that this view is shared by the company, whose consent to disclosure was sought and declined. That said, the Chief Executive of the company did not object to the disclosure of his own CV as it related to his professional qualifications. This was released to Dr Spowart during the investigation.
35. The Ministers argued that disclosure of the information would place the company at an unfair disadvantage to its competitors, could lead to the loss of the right to patent any product based on the project and could prejudice the company's future funding and viability. This was disputed by Dr Spowart, who stated that the technology in question was already in the public domain. [...]
36. The Commissioner, having considered the submissions put forward by both the Ministers and Dr Spowart, is satisfied that disclosure of the information withheld under section 36(2) would be unauthorised by, and detrimental to, the company supplying it. The Commissioner is therefore satisfied that the tests for an actionable breach of confidence above are met in this case.
37. As noted above, while the exemption in section 36(2) of FOISA is an absolute exemption in terms of section 2(2) of FOISA and not subject to the public interest test in section 2(1)(b), the law of confidence recognises that in certain circumstances the strong public interest in maintaining confidences may be outweighed by the public interest in disclosure of the information. In deciding whether to enforce an obligation of confidentiality, the courts are required to balance these competing interests, but there is no presumption in favour of disclosure. This is known as the public interest defence.
38. The courts have identified a relevant public interest defence in cases where withholding information would cover up serious wrongdoing, and where it would lead to the public being misled on, or would unjustifiably inhibit public scrutiny of, a matter of genuine public concern.
39. In this case, the Ministers stated that it could not identify any public interest defence which would justify the release of the information requested.
40. In coming to a decision on this matter, the Commissioner has taken account of the submissions made by Dr Spowart in his application and further correspondence in relation to the public interest.
41. While there may be a general public interest in economy, efficiency and effectiveness in the expenditure of public funds and more particularly in transparency and fairness in the awarding of Government grants, there has been no evidence presented in this case of specific wrongdoing or anything else which has aroused the concern of the Commissioner. The Commissioner accepts that the application for funding has still to be finalised and, if it is successful, certain details, as outlined above, will be publicly available. There is, on the other hand, a strong public interest in the maintenance of confidences.



42. Having considered all the arguments, therefore, the Commissioner does not consider there to be a reasonable argument in this case for the release of confidential information on public interest grounds and consequently is satisfied that the Ministers correctly withheld the information in the application (including the attached CVs) under section 36(2) of FOISA.
43. Given that the Commissioner is satisfied that the information contained within the CVs of company personnel named as being associated with the proposed project was correctly withheld under section 36(2) of FOISA, he is not required to (and will not) go on to consider the application of section 38(1)(b) in relation to those CVs.

Section 38(1)(b) (Personal data)

44. In relation to that part of Dr Spowart's request set out at 5i above, the Ministers provided details of the information held which fell within the scope of this request. This consisted of the CV of one employee, which the Ministers withheld in terms of section 38(1)(b) of FOISA (as read with section 38(2)(a)(i)) in that release would breach the first data protection principle.
45. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (2)(b) (as appropriate) exempts personal data from release if its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles. As noted above, the Ministers believe that disclosure of the information would breach the first data protection principle.
46. In considering the application of this exemption, the Commissioner will therefore first consider whether the information in question is personal data as defined in section 1(1) of the DPA and, if it is, whether he is satisfied that disclosure of the information would breach the first data protection principle. The Commissioner will also consider whether any of the information is sensitive personal data as defined in section 2 of the DPA and, if it is, the implications of its status as sensitive personal data for the application of the first data protection principle.
47. It must be borne in mind that this particular exemption (i.e. section 38(1)(b) read in conjunction with section 38(2)(a)(i) or (b)) is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.

Is the information under consideration personal data?

48. "Personal data" is defined in section 1(1) of the DPA as "data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."



49. The Commissioner is satisfied that the information to which the Ministers applied the section 38(1)(b) exemption falls within the definition of personal data. A living individual can be identified from the information. The information is biographical in relation to the individual in question, in that it describes their qualifications and experience. It is clear in this case that the employee is the focus of the information. The Commissioner is therefore satisfied that the information relates to that individual.
50. The Commissioner has considered whether any of the personal data in question is sensitive personal data as defined by section 2 of the DPA and is satisfied that none of the personal data can be described as sensitive personal data.
51. The Commissioner will now go on to consider whether disclosure of the information would breach the first data protection principle.

The first data protection principle

52. The first data protection principle states that personal data shall be processed fairly and lawfully. It also states that personal data shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 of the DPA is also met. As noted above, the Commissioner is satisfied that the information is not sensitive personal data and so is not required to consider whether any of the conditions in Schedule 3 can be met.
53. The Commissioner considers that only condition 6 in Schedule 2 to the DPA might be considered to apply in this case. Condition 6 allows personal data to be processed (in this case, disclosed in response to Dr Spowart's information request) if the disclosure of the data 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 (which emphasises the need to treat each case on its own facts and circumstances) by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
54. There are, therefore, a number of tests which must be met before condition 6(1) can apply. These are:
 - Does Dr Spowart have a legitimate interest in having this personal data?
 - If so, is the disclosure necessary to achieve those legitimate aims? (In other words, is disclosure proportionate as a means and fairly balanced as to ends or could these legitimate aims be achieved by means which interfere less with the privacy of the data subject?)
 - Even if disclosure is necessary for the legitimate purposes of the applicant, would 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 Dr Spowart and those of the data subject. Only if the legitimate interests of Dr Spowart outweigh those of the data subject can the personal data be disclosed. It should be noted that there is no presumption in favour of disclosure.



55. Dr Spowart was asked by the Commissioner to specify why he considered that he had a legitimate interest in knowing the content of the CV in question. He commented that as a professional scientist, and therefore part of a community of consumers of R&D grant funding, and as a taxpayer, he had a legitimate interest in establishing that the people awarding and monitoring grant monies had the qualifications and experience to do so.
56. Dr Spowart further stated that as a scientist, he would expect to be asked for his CV by any organisation wishing to employ him, especially if he was employed to monitor the effectiveness of technical outcomes, on which further investment was dependent, which was exactly what he considered the staff associated with this project were being asked to do.
57. Having considered Dr Spowart's submissions, the Commissioner is satisfied that he has a legitimate interest in the withheld personal data. In the circumstances he is also satisfied that disclosure of the information is necessary for the purposes of these legitimate interests: he can identify no means of verifying the qualifications and experience of the individual concerned, in particular, which would be less intrusive of that individual's privacy.
58. Turning to the rights, freedoms and legitimate interests of the data subject, the Ministers advanced certain arguments specific to the individual in question, stating that as a result the individual did not consent to disclosure. They noted that it had been provided to them by the individual for the sole purpose of applying to join the Scottish Government. The Commissioner has considered these arguments carefully. He has taken into account the guidance on this point in his own briefing on the section 38 exemption¹, which identifies relevant factors as including:
 - whether the information relates to the individual's public or private life
 - the potential harm or distress that may be caused by disclosure
 - whether the individual has objected to disclosure
 - the reasonable expectations of the individual as to whether their information would be disclosed.
59. In this case, the Commisisoner has noted the specific objections to disclosure and the reasons advanced in support of these. He has also considered whether there should have been any reasonable expectation of disclosure on the part of the data subject, taking account (in line with the above guidance) the seniority (or lack of seniority) of the individual in question.
60. Employees will normally have a reasonable expectation that information which is supplied as to a prospective employer during the recruitment process will not be disclosed to anyone outside the recruitment process. In this case, the Commissioner is satisfied that the employee in question does not hold a particularly senior position and would not have reasonably expected that the information in this particular CV would be made public.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.asp>



61. The Commissioner has in the past ordered the disclosure of information relating to a person's qualifications and experience where he considers that the specific nature and responsibilities of that person's post would give rise to expectations of transparency and accountability; see for example *Decision 055/2007 Professor Ronald Macdonald and Highland Council*. In this case, however, the Commissioner does not consider that the role played by the employee would give rise to such an expectation. In coming to this conclusion, the Commissioner has considered the role carried out by the employee in question, and notes that his role was very much to support the SMART: SCOTLAND Advisory panel and his Head of Unit as opposed to making decisions on funding. Where the employee was entitled to authorise grants, these were grants with a low value threshold and the approval was on the basis of expert assessments.
62. Having balanced the legitimate interests of the data subject against those identified by Dr Spowart, therefore, the Commissioner finds that the legitimate interests served by disclosure would not outweigh the unwarranted prejudice that would be caused in this case to the rights and freedoms or legitimate interests of the data subject. The Commissioner therefore concludes that condition 6 in Schedule 2 to the DPA is not met.
63. Having accepted that disclosure of the withheld personal data would lead to unwarranted prejudice to the rights and freedoms or legitimate interest of the data subject as described above, the Commissioner must also conclude that disclosure would be unfair. As condition 6 is not met, he would also regard disclosure as unlawful. In all the circumstances, therefore, the Commissioner's conclusion is that the first data protection principle would be breached by disclosure of the information and that the withheld personal data was properly withheld under section 38(1)(b) of FOISA.
64. The Council also applied the exemptions in sections 30 (c) and 33 (1)(b) of FOISA to certain information. As the Commissioner has found all of this information to have been correctly withheld under sections 36(2) and 38(1)(b) of FOISA, he is not required to (and will not) go on to consider the application of these other exemptions in this case.

DECISION

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Dr Spowart.



Appeal

Should either Dr Spowart or the Scottish Ministers 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.

Margaret Keyse
Scottish Information Commissioner
14 July 2010



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 –
 - ...
 - (c) section 36(2);
 - ...
 - (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.



36 Confidentiality

...

- (2) Information is exempt information if-
- (a) it was obtained by a Scottish public authority from another person (including another such authority); and
 - (b) its disclosure by the authority so obtaining it to the public (otherwise than under this Act) would constitute a breach of confidence actionable by that person or any other person.

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

...



Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

...

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