

Decision Notice



Decision 219/2010 Mr Paul Hutcheon of the Sunday Herald and the Water Industry Commission for Scotland

Information relating to travel costs

Reference No: 201001231
Decision Date: 22 December 2010

www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

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



Summary

Mr Paul Hutcheon (Mr Hutcheon), the Scottish Political Editor of the Sunday Herald, requested from the Water Industry Commission for Scotland (WICS) information relating to its Chief Executive's travel to London and the sums paid to CGL Chauffeur Drive (CGL). WICS responded by advising Mr Hutcheon that the cost of complying with the first part of his request would exceed the sum of £600 prescribed for the purposes of section 12(1) of FOISA. In relation to the second part of the request, WICS considered that the information was exempt from disclosure in terms of section 38(1)(b) of FOISA. Following a review, Mr Hutcheon remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the cost of complying with the first part of Mr Hutcheon's request would exceed the specified cost limit and that WICS was therefore not obliged to comply with it. However, the Commissioner concluded that the exemption in section 38(1)(b) of FOISA had been incorrectly applied to the information concerning the sum paid to CGL. He required WICS to provide this information to Mr Hutcheon.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(e)(ii) (Effect of exemptions); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance) 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) sections 1(1) (Basic interpretative provisions – definition of "personal data") and 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 Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount)

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 25 March 2010, Mr Hutcheon emailed WICS requesting the following information:
 - a) Please state all trips Alan Sutherland has made to London since becoming Chief Executive, including cost, date and purpose.
 - b) How much has WICS paid to CGL Chauffeur Drive (GCL) since the Commission's inception?
2. On 26 March 2010, WICS emailed Mr Hutcheon advising him that, in relation to request a), its initial view was that the cost of complying with the request would exceed the £600 limit set out in the Fees Regulations and inviting him to discuss whether the scope of the request could be narrowed to bring it within the £600 limit.
3. Also on 26 March 2010, Mr Hutcheon emailed WICS advising it that he wished to limit the scope of request a) to cover 2007, 2008, 2009 and 2010.
4. WICS responded on 23 April 2010. In relation to request a), WICS advised Mr Hutcheon that it still considered the cost of complying with the request would exceed the limit set out in the Fees Regulations and therefore it was not obliged to comply with the request by virtue of section 12(1) of FOISA. In relation to request b), WICS advised Mr Hutcheon that the information was considered exempt from disclosure under section 38(1)(b) of FOISA.
5. On 4 May 2010, Mr Hutcheon wrote to WICS requesting a review of its decision. In particular, Mr Hutcheon considered he had narrowed the scope of request a) sufficiently to allow WICS to provide an answer and, in relation to request b), he believed there was a public interest in knowing how much of WICS' budget had been spent on chauffeur driven cars.
6. WICS notified Mr Hutcheon of the outcome of its review on 2 June 2010 upholding its previous decision without amendment.
7. On 15 June 2010, Mr Hutcheon wrote to the Commissioner, stating that he was dissatisfied with the outcome of WICS' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr Hutcheon 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 23 June 2010, WICS was notified in writing that an application had been received from Mr Hutcheon and was asked to provide the Commissioner with any information withheld from him. WICS responded with the information requested and the case was then allocated to an investigating officer.
10. The investigating officer subsequently contacted WICS, 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, WICS was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, to provide detailed calculations showing the estimated costs taken into account for the purposes of section 12(1), and an explanation of how this estimate was reached in relation to request a) and to provide detailed submissions on its application of the exemption in section 38(1)(b) in relation to request b).
11. WICS responded on 12 August 2010 with calculations of the costs taken into account for the purposes of section 12(1) of FOISA and providing full submissions on its application of the exemption in section 38(1)(b) of FOISA.
12. The investigating officer also contacted Mr Hutcheon during the investigation seeking his submissions on the matters to be considered in the case. Mr Hutcheon's submissions, along with those of WICS are summarised and considered (where relevant) in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

13. 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 Hutcheon and WICS and is satisfied that no matter of relevance has been overlooked.

Section 12(1) of FOISA – Excessive cost of compliance

14. WICS submitted that it could not provide Mr Hutcheon with information that would address request a) without exceeding the prescribed limit for the purposes of section 12(1) of FOISA and that it was therefore not obliged to comply with this part of his request. This sought information on all trips made by the Chief Executive to London from 2007 including the cost, date and purpose



15. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the amount prescribed in the Fees Regulations. This amount is currently prescribed as £600 in regulation 5 of the Fees Regulations. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to a request for information exceeds this amount.
16. The projected costs that the public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the public authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The public authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is set at £15 per hour.
17. In his review request to of 4 May 2010, Mr Hutcheon suggested that he had narrowed the scope of his request sufficiently to allow WICS to provide an answer.
18. In its submissions to the Commissioner, WICS noted that the information required to comply with the request was held in a number of locations and was spread across a number of different formats and filing systems.
19. WICS initially explained that a search would have to be undertaken of the diaries and email records of its Chief Executive, Director of Corporate Affairs and PA to the Chief Executive. WICS explained that, as part of its retention policy, it does not hold diaries beyond 3 months and therefore it would require a search of relevant email inboxes to ascertain the dates when the Chief Executive was in London and for what purpose. WICS considered it would be necessary to search all of these records to ensure accurate information was identified as the specific information requested by Mr Hutcheon was not held in any other format. WICS estimated that these searches would take 28 hours and would require to be carried out by a member of staff with access to the necessary diaries and a knowledge of the Chief Executive's trips for the specified years. WICS estimated the cost of this work to be £420.
20. WICS explained that it would then be necessary to use this data to identify the trips in question across the financial records for each year from 2007 to allow the costs of the trips to be calculated. WICS explained that a search would be required across different sets of financial records for each year in question as payment could have been made from a number of sources.



21. WICS advised that the financial records that would require to be searched would be its SAGE (electronic) accounting records, paper invoices, paper credit card statements and paper expenses claim forms. WICS stated that expenditure on travel and accommodation could be paid either by payment of an invoice, by credit card or claimed through the expenses system. WICS advised that the nature of the work in locating and extracting the required information would involve going through every potential source of payment and capturing any expenditure incurred on a business trip to London involving the Chief Executive. WICS would then have to match the payments and date of payments to the journeys identified by the diary and email inbox searches.
22. WICS explained that the work involved in carrying out the relevant searches of its financial records would require to be carried out by two members of staff with knowledge of its accounting records. WICS estimated that the cost of carrying out these searches would be £921.55.
23. WICS also stated that, in order to analyse, format and present the relevant financial data for the years in question and consequently, to calculate all of the costs in question, work would have to be undertaken by a member of staff with the necessary skill and knowledge of accountancy and financial record keeping. This would require analysing, processing and presenting the collated financial information. WICS estimated the cost of this aspect of the work required in complying with the request to be £210.
24. The Commissioner has considered the submissions made by both parties in this case and overall is satisfied with WICS' arguments as to the tasks which would have been required to locate, retrieve and provide the information requested by Mr Hutcheon.
25. The Commissioner considers that WICS's estimates of the time and staff resources that would be required to undertake this work appear to be somewhat high, and so he has considered whether reductions in these estimates would bring the cost of compliance within the £600 threshold. However, he notes that even reducing the number of hours claimed to be required by WICS by 60% at each stage in the process (to a level that the Commissioner considers to be clearly reasonable), the cost of complying with the request would still be £680.
26. Having considered its submissions, acknowledging that both manual and electronic searches would be required to locate any potentially relevant information, and the nature of the work involved in analysing the information thereafter, he is satisfied that WICS has provided a reasonable estimate of the cost of complying with the request, which would exceed the prescribed sum of £600. Therefore, the Commissioner concludes that WICS was correct in its application of section 12(1) of FOISA and was under no obligation to comply with this part of the information request made by Mr Hutcheon.



Section 15 of FOISA – Duty to provide advice and assistance

27. Section 15 of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. Examples of such advice and assistance given in the Scottish Ministers' Code of Practice on the discharge of functions by public authorities under FOISA include, in cases where section 12(1) applies, "an indication of what information could be provided within the cost ceiling".
28. In response to questions from the investigating officer, WICS stated that, on receipt of Mr Hutcheon's request of 25 March 2010, it had contacted him to advise him that its initial view was that the cost of complying with request a) would exceed the £600 limit but had indicated WICS would be willing to discuss with Mr Hutcheon whether his request could be narrowed down to bring it within the £600 limit. However as noted above, Mr Hutcheon subsequently asked that the request be limited to specified years.
29. It would have been more helpful for both parties if discussion had been entered into as to what information could be provided within the cost limit e.g by reference to date and costs of the trips alone (without an explanation of the purpose of the trip) or limited to fewer years. If Mr Hutcheon would still like to receive this information the Commissioner recommends that he enter into discussion with WICS prior to the submission of any fresh request. However in this case the Commissioner is satisfied that WICS met the requirements of section 15 of FOISA in this particular case.

Section 38(1)(b) of FOISA – Personal information

30. WICS applied the exemption in section 38(1)(b) of FOISA to the information sought in request b) which was for the total sum paid to CGL.
31. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) (or, where appropriate, 38(2)(b)), exempts information from disclosure if it is "personal data" as defined by section 1(1) of the DPA, and its disclosure would contravene one or more of the data protection principles set out in Schedule 1 to the DPA. This exemption is absolute in that it is not subject to the public interest test laid down by section 2(1)(b) of FOISA.
32. WICS has withheld the information sought in request b) under section 38(1)(b) of FOISA, arguing that it is personal data, the disclosure of which would contravene the first data protection principle.

Is the information personal data?

33. 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).



34. In this case, although the information concerns CGL which is a chauffeur business, the Commissioner is aware that this is a sole trader business. Accordingly, the Commissioner is satisfied the information relates to a living individual (the sole trader) who can be identified from that information along with other information in the possession of WICS. He notes that the information concerns that individual's business activities and financial circumstances, which constitutes personal data under the terms of the DPA.
35. The Commissioner must now go on to consider whether disclosure would breach any of the data protection principles contained in Schedule 1 to the DPA. As noted above, WICS has argued that disclosure would breach the first data protection principle.

Would disclosure breach the first data protection principle?

36. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met.
37. 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 of the DPA in this case.
38. 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. For example, if there is a specific condition in the schedules which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
39. 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. If any of these conditions can be met, he must then consider whether the disclosure of this personal data would be fair and lawful.

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

40. When considering the conditions in Schedule 2 of the DPA, the Commissioner has noted Lord Hope's comment in the case of the Common Services Agency v Scottish Information Commissioner¹ (the Collie judgement) that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information but rather to protect personal data from being processed in a way that might prejudice the rights, freedoms or legitimate interests of the data subject.

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



41. The Commissioner considers condition 6 to be the only condition in Schedule 2 which might permit disclosure in this case. Condition 6 permits personal data to be processed if the processing (which in this case would be by disclosure in response to Mr Hutcheon's information request) 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, freedoms or legitimate interests of the data subject (the individual(s) to whom the withheld information relates). It is clear from the wording of this condition that each case will turn on its own facts and circumstances.
42. There are, therefore, a number of different tests which must be considered before condition 6 can be met. These are:
 - a. Does Mr Hutcheon have a legitimate interest in obtaining the withheld personal data?
 - b. If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the 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 individual in question?
 - c. Even if the processing is necessary for Mr Hutcheon's legitimate purpose, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the individual? As noted by Lord Hope in the Collie judgement there is no presumption in favour the release of personal data under the general obligation laid down in FOISA. Accordingly, the legitimate interests of Mr Hutcheon must outweigh the rights, freedoms or legitimate interests of the data subject before condition 6(1) will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that WICS was correct to refuse to disclose the personal data to Mr Hutcheon.

Does Mr Hutcheon have a legitimate interest?

43. In his submissions to the Commissioner, Mr Hutcheon argued that the public deserves to have this information as WICS is a public body that is accountable to the public and there is a legitimate interest in transparency.
44. In its submissions, WICS acknowledged that there is some public interest in finding out how it spends public money, in this case about how money relating to travel costs is spent.
45. WICS also submitted that it had previously provided Mr Hutcheon with a large amount of information relating to travel expenses and other outlays. It considered this information provided a sufficient level of detail as to costs outlaid by WICS without necessitating a level of detail that would impinge on the privacy of an individual.
46. Having considered the submissions of both parties, the Commissioner accepts that Mr Hutcheon has a legitimate interest (as indeed do the wider public) in knowing how public money is spent and that scrutiny of this type of expenditure is a matter of general legitimate interest.



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

47. The Commissioner must now consider whether disclosure is necessary for those legitimate interests and in doing so he must consider whether these interests might reasonably be met by any alternative means.
48. In this case, the Commissioner can identify no viable means of meeting Mr Hutcheon's legitimate interests which would interfere less with the privacy of the relevant data subject other than by obtaining the exact information requested.

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

49. As the Commissioner is satisfied that disclosure of the personal data would be necessary to fulfil Mr Hutcheon's legitimate interests, the Commissioner is now required to consider whether that disclosure would nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject. As noted above, this involves a balancing exercise between the legitimate interests of Mr Hutcheon and the individual in question. Only if the legitimate interests of Mr Hutcheon outweigh those of the individual in question can the information be disclosed without breaching the first data protection principle.
50. In the Commissioner's briefing on section 38 of FOISA², he 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 might be caused by 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.
51. In his submissions to the Commissioner, Mr Hutcheon argued that sole traders should have every expectation that money received from public bodies would be published. Mr Hutcheon did not consider that there should be an individual right to receive money from a public body and then refuse to disclose how much money had been received.
52. In its submissions, WICS argued that the information in question related to the individual's finances and therefore their private life. It submitted that disclosure of the information would cause distress to that individual as it would disclose details of their financial position and would have a negative effect on that individual's business. In this respect, WICS provided the Commissioner with a copy of an email from the data subject to WICS where the data subject expressed concerns that if information concerning their income were to be placed in the public domain, it could have a detrimental effect on them as an individual as well as on their business as they considered it likely that business competitors would take advantage of the information.

² <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&SID=133>



53. WICS also submitted that the individual in question would have no expectation that this information would be released and that, as a sole trader, they had no obligation to make their accounts or finances public knowledge. WICS pointed out that the individual in question had chosen not to trade through any other business format such as a limited liability company where there would be disclosure obligations. WICS also noted that the individual in question had not consented to disclosure of the information.
54. WICS also stated that it had already provided Mr Hutcheon with a large volume of information on the level of travel expenses and other outlays of certain individuals at WICS which it considered provided a sufficient level of detail as to the costs outlaid by it in respect of various services without necessitating a level of detail that would impinge upon the privacy of an individual.
55. Whilst the data subject in this case has expressed some concerns about the potential effect on them as an individual and on their business should the information be disclosed into the public domain, the Commissioner considers that individuals who engage in commercial activity with public authorities should expect some details of their business activities to be subject to public scrutiny.
56. The Commissioner considers that the payments made to the individual in question constitute information about their work life, but he recognises that a person's income relates to an individual's private life as well. However, in the circumstances of this case he does not consider that the payment information is likely to reveal the actual financial circumstances of the individual. The information relates only to a global figure paid over the entirety of the period since WICS' inception in 2005 and does not provide any details of sums paid during shorter, defined time periods or (for example) any sums payable per journey or during each year.
57. The Commissioner recognises that disclosure may cause some distress to the data subject to the extent that disclosure would involve revealing, to some degree, their personal financial and business interests. Consequently, he accepts that disclosure might cause some prejudice to the rights, freedoms and legitimate interests of the data subject as the information relates to some aspects of their personal financial and business interests. However, the Commissioner is not satisfied that disclosure of the information would represent an unwarranted interference given that the disclosure would only be of some financial information relating to the data subject, namely the global sum received from WICS across a number of years.
58. The Commissioner has balanced the legitimate interests of the data subject against the legitimate interests identified by Mr Hutcheon. Having done so, the Commissioner finds that the legitimate interests served by disclosure to Mr Hutcheon (and the wider public) outweigh the unwarranted prejudice that would be caused to the rights, freedoms or legitimate interests of the data subject. In particular, the Commissioner considers there is a clear, legitimate public interest in ensuring transparency, accountability and public scrutiny of the use of public funds. The Commissioner is therefore satisfied that condition 6 of schedule 2 of the DPA can be met in this case.



59. Having reached this conclusion, the Commissioner has gone on to consider whether (as required by the first data protection principle) disclosure of the information concerning the data subject would be fair and lawful.
60. In its submissions to the Commissioner, WICS has argued that disclosure would not be fair and lawful as the individual in question is not employed by it, but is a private individual who provides services to it. WICS considered that the information related to the individual's finances and therefore their private life.
61. However, the Commissioner considers that disclosure would be fair, for the reasons already outlined in relation to condition 6 above. Whilst WICS has also argued that disclosure would be unlawful, the Commissioner is unable to identify (having concluded that condition 6 of schedule 2 to the DPA can be met) any specific law forbidding disclosure.
62. Having found disclosure of the information concerning the sum paid to CGL to be both fair and lawful, and in accordance with condition 6(1), the Commissioner therefore concludes that disclosure of this information would not breach the first data protection principle.
63. The Commissioner therefore concludes that the exemption in section 38(1)(b) has been wrongly applied by WICS to the withheld information relating to the sum paid to CGL, and so it acted in breach of section 1(1) of FOISA by withholding this.
64. The Commissioner requires WICS to disclose to Mr Hutcheon the sum paid to CGL since WICS' inception to the date of Mr Hutcheon's information request.

DECISION

The Commissioner finds that the Water Industry Commission for Scotland (WICS) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hutcheon.

The Commissioner finds that by applying section 12(1) of FOISA in response to part a) of Mr Hutcheon's request, WICS complied with Part 1.

However, by incorrectly applying the exemption in section 38(1)(b) to part b) of Mr Hutcheon's request, the Commissioner finds that WICS breached the requirements of Part 1 and in particular section 1(1) of FOISA.

The Commissioner therefore requires WICS to provide Mr Hutcheon with the sum paid to CGL from its inception to the date of Mr Hutcheon's information request by 7 February 2011.

Decision 219/2010
Mr Paul Hutcheon of the Sunday Herald and
the Water Industry Commission for Scotland



Appeal

Should either Mr Hutcheon or WICS 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
22 December 2010



Appendix

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

...

- (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.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...



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.

...



Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.