

Decision Notice



Decision 199/2012 Mr Gary Pearson and Renfrewshire Council

Information pertaining to the Council's pre-2007 housing allocation policy

Reference No: 201200424

Decision Date: 4 December 2012

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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Summary

Mr Pearson asked Renfrewshire Council (the Council) for information about its pre-2007 housing allocation policy. The Council responded by providing some information, but withholding the remainder under sections 25(1), 36(1) and 38(1)(b) of FOISA. Further information was disclosed after a review and during the Commissioner's investigation.

Following the investigation, while the Commissioner found that the Council had generally dealt with the request correctly, she identified certain information which should not have been withheld as subject to legal professional privilege and required its disclosure. She also identified certain information, disclosed during the investigation, which the Council had incorrectly described as reasonably obtainable by Mr Pearson.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(a) and (e)(ii) (Effect of exemptions); 25(1) (Information otherwise accessible); 36(1) (Confidentiality); 38(1)(b), (2)(a)(i), (2)(b) and (5) (definitions of "the 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"); Schedules 1 (The data protection principles) (the first data protection principle) and 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (condition 6)

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

Background

1. On 6 December 2011, Mr Pearson wrote to the Council requesting the following information in relation to Council's illegal housing allocation policy of 1987 to 2007:
"...any and all documents, notes, communications, including CMT [Corporate Management Team] agendas and minutes, the Council hold in connection with the Council's admitted illegal housing policy..."



2. The Council responded on 9 January 2012, providing Mr Pearson with copies of the Monitoring Officer's report discussed in *Decision 093/2009 Mr Thomas Gatley and Renfrewshire Council*¹. The Council withheld some information on the grounds that it was legal advice, citing section 36(1) of FOISA, and other information on the grounds that it was otherwise accessible, citing section 25(1) of FOISA.
3. On 16 January 2012, Mr Pearson wrote to the Council requesting a review of its decision. In particular, he disagreed with the Council's reliance on section 36(1) of FOISA. He also asked the Council to provide him with more direct website links where he could access the information being withheld under section 25(1) of FOISA.
4. Notifying Mr Pearson of the outcome of its review on 10 February 2012, the Council stated that its records retention policy only obliged it to retain minutes and reports for a six year period and reiterated that more recent documents could be accessed via its website. The Council advised that some earlier documents might still be held by Paisley Central local studies library (Paisley Library) and, if so, they would be publicly accessible to anyone searching there. The Council disclosed to Mr Pearson those documents over six years old which it did still hold, with the exception of information it still considered exempt under sections 25(1) and 36(1). It provided some clarification in respect of the information it considered otherwise accessible.
5. On 2 March 2012, Mr Pearson 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.
6. The application was validated by establishing that Mr Pearson 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

7. On 27 March 2012, the Council was notified in writing that an application had been received from Mr Pearson and was asked to provide the Commissioner with any information withheld from him. The Council responded, providing part of the information requested, and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on sections 25(1) and 36(1) of FOISA.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2009/200900569.asp>



9. The Council was also asked by the investigating officer to provide her with the remainder of the withheld information which it had not already provided and to carry out further searches to ascertain whether or not any further information might be held. It was also asked to clarify how information to which section 25(1) had been applied might be accessed, a line of enquiry which continued during the investigation: by the end of the investigation, all of this information had been provided to Mr Pearson in hard copy, along with further information obtained from Paisley Library.
10. Mr Pearson confirmed that he did not require the information relating to one named individual which was contained in the withheld information but that he did require that of any other third parties. He also stated that he was particularly interested in the Council disclosing Monitoring Officer's reports concerning the illegal housing policy, any legal advice relating to the illegal housing policy and any CMT meeting minutes discussing the illegal housing policy.
11. The Council's submissions included its view that the exemption at section 38(1)(b) of FOISA should apply to the personal data of third parties.
12. The relevant submissions received from both the Council and Mr Pearson will be considered fully in the Commissioner's analysis and findings 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 her by both Mr Pearson and the Council and is satisfied that no matter of relevance has been overlooked.

Section 36(1) – Confidentiality

14. Section 36(1) of FOISA exempts from disclosure information in respect of which a claim of confidentiality of communications could be maintained in legal proceedings. Among the types of communication which fall into this category are those covered by legal advice privilege, which covers communications between lawyer and client in which legal advice is sought or given.
15. The Council indicated that it was relying upon the exemption contained in section 36(1) of FOISA to withhold information subject to legal advice privilege.
16. The documents being withheld by the Council under section 36(1) of FOISA fall into the following groups:
 - a) Opinions of Senior Counsel from August 1994 and February 1996 and the Memorials for these Opinions;
 - b) An annotated Monitoring Officer's Report from November 1999;



- c) Memos, correspondence and hand written notes between the Council's legal advisers and other Council Departments and the Scottish Office;
 - d) Housing policy drafts with comments added by the Council's legal advisers;
 - e) Internal briefing notes from the Council's legal advisers;
 - f) The covering notes attached to various faxes, reports and pieces of correspondence;
 - g) Notes of meetings;
 - h) Correspondence to/from the Council and two members of the public on the subject of the housing policy;
 - i) Briefing notes from the Council's Housing Department to the Community Safety Policy Board;
 - j) Fee notes for Faculty Services and associated correspondence, including handwritten calculations;
 - k) Circulars from COSLA to housing authorities, including the Council;
 - l) Correspondence between the Council and a local Councillor representing a third party;
 - m) Reports by the Director of Housing summing up how the allocations policy operates.
17. For legal advice privilege to apply, certain conditions must be fulfilled. The communication must be with a professional legal adviser, such as a solicitor (including, in most cases, an in-house one) or an advocate. The legal adviser must be acting in their professional capacity as such and the communication must occur in the context of their professional relationship with their client. The information must be confidential between lawyer and client. Privilege does not extend to matters known to the legal adviser through sources other than the client or to matters in respect of which there is no reason for secrecy.
18. Having considered the content of the withheld documents and the circumstances under which they were obtained (i.e. in the context of a professional relationship between a legal adviser and their client, in the course of which confidential legal advice was requested and provided) the Commissioner is satisfied that some, but not all, of the information meets all of the conditions set out in the above paragraph and is subject to legal advice privilege, and therefore is exempt information under section 36(1) of FOISA.
19. The Commissioner is of the view that the documents falling into the above noted categories a) to e) inclusive comprise exempt information under section 36(1), but those falling within categories f) to m) inclusive do not. She therefore cannot uphold the Council's reliance on section 36(1) of FOISA in relation to the latter group of categories and is not required to go on to consider the application of the public interest test in respect of these.



20. In respect of those documents falling within categories a) to e) inclusive, the Commissioner must now go on to consider the public interest test.

The public interest test

21. The exemption in section 36(1) is a qualified exemption, which means that the application of this exemption is subject to the public interest test set out in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. If the two are evenly balanced, the presumption should always be in favour of disclosure.
22. As the Commissioner has noted in a number of previous decisions, the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds. Many of the arguments in favour of maintaining confidentiality of communications were discussed in a House of Lords case, *Three Rivers District Council and others v Governor and Company of the Bank of England (2004) UKHL 48*², and the Commissioner will apply the same reasoning to communications attracting legal professional privilege generally.
23. While acknowledging a general public interest in transparency and accountability, the Council considered it crucial to the effective administration of local government that legal advice could be provided to the Council without fear or concern that this would be released into the public domain. Such release would, the Council argued, significantly compromise both solicitor and client department. In line with previous decisions of the Commissioner, it believed the stronger public interest to lie in protecting the ability of a Scottish public authority to seek and receive comprehensive legal advice in confidence, to enable them to make informed decisions.
24. The Council commented that the term “public interest” means “something which is of serious concern and benefit to the public”, rather than something which was simply of interest to the public. The Council’s view was that in this particular case there was no overriding public interest in disclosure of the withheld information.
25. The Council submitted that, just as the sensitivity of information could decrease over time, so could the public interest in disclosure. It pointed out that its former housing allocation policy was no longer in operation and, with the exception of Mr Pearson and another named third party, there did not appear to be any interest in the former policy.

² <http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd041111/riv-1.htm>



26. When asked by the investigating officer to provide specific reasons as to why he believed it would be in the public interest for the information to be disclosed, Mr Pearson did not provide a response. However, Mr Pearson did state in his review request to the Council and in his application to the Commissioner that the public had a right to access information which had been paid for by the public purse. Mr Pearson stated that information which he was requesting had been supplied to a third party, but the Commissioner notes that the Monitoring Officer's Report in question, which was the subject of *Decision 093/2009*, was not the same one as is being withheld from Mr Pearson and was not an annotated copy.
27. The Commissioner has considered the submissions put forward by both the Council and Mr Pearson and she accepts that there is a general public interest in authorities being open to scrutiny and being accountable for their actions. She also considers that this extends to knowing whether the Council has been correctly discharging its duties on behalf of its taxpayers – and to scrutiny of the disbursement of public funds in purchasing legal advice.
28. In this instance, however, the Commissioner finds that there is a greater public interest in allowing the Council to obtain confidential legal advice from its advisers. The Commissioner has not seen evidence that there is widespread public interest in the disclosure of the information withheld in this case under section 36(1), or indeed more generally in the issue of the Council's pre-2007 housing policy.
29. On balance, therefore, the Commissioner is satisfied, in all the circumstances of this case, that the public interest in disclosure of the information is outweighed by the public interest in maintaining the exemption in section 36(1).
30. Consequently, the Commissioner accepts that the Council was entitled to withhold the legal advice noted in parts a) to e) of paragraph 16 above, under the exemption in section 36(1) of FOISA.

Section 38(1)(b) of FOISA – personal data

31. With regard to the documents within the aforementioned groups f) to m), the Commissioner must now go on to consider the Council's application of section 38(1)(b) of FOISA to any personal data of members of the public contained within these documents.
32. The information falling under this remit consists of correspondence between the Council and a member of the public on the subject of the housing policy.
33. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) (or, where appropriate, section 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 particular exemption is an absolute exemption (see section 2(2)(e)(ii) of FOISA), and so is not subject to the public interest test laid down by section 2(1)(b) of FOISA.



34. In order for a public authority to rely on this exemption, it must show firstly that the information which has been requested is personal data for the purposes of the DPA and secondly that disclosure of the information would contravene at least one of the data protection principles laid down in the DPA.
35. The Council submitted that this information should be withheld, on the grounds that it comprised the personal data of the third party and its disclosure would breach the first data protection principle.

Is the information personal data?

36. 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).
37. The information in question contains the name, address, telephone number and handwritten comments of the individual correspondent(s). The Commissioner notes that Mr Pearson has indicated that he does not require the name, address or telephone number of any correspondent, and therefore she will not consider this information any further in this decision.
38. The remaining information consists of the views and opinions of member(s) of the public, contained in handwritten correspondence. The Commissioner is of the view that this information clearly relates to the individual correspondent(s), and considers that the individual(s) (who are likely to be still living) are identifiable from this information when taken in conjunction with other information in the public domain. The Commissioner therefore considers the information to be the personal data of the correspondent(s), in terms of part (b) of the definition set out in paragraph 36 above.
39. The Commissioner must now consider whether disclosure of the information would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

40. 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. The processing under consideration in this case is disclosure of the personal data into the public domain in response to Mr Pearson's information request.
41. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. These three aspects are interlinked. For example, if there is a specific condition which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.



42. There is nothing to suggest that the information is sensitive personal data, as defined in section 2 of the DPA. Consequently, the Commissioner only considers it necessary to determine whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. Where a Schedule 2 condition can be met, she will then go on to consider whether disclosure of the personal data would otherwise be fair and lawful.

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

43. Having considered all the Conditions in Schedule 2, the Commissioner finds that only condition 6 might be applicable in the circumstances of this case.
44. Condition 6 allows personal data to be processed if 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(s) (i.e. the individual(s) to whom the data relate).
45. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
- (a) Does Mr Pearson have a legitimate interest in obtaining the personal data?
 - (b) If yes, is the disclosure necessary to achieve these legitimate interests? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subject(s)?
 - (c) Even if the processing is necessary for Mr Pearson's legitimate interests, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the individual(s) in question? There is no presumption in favour of the release of personal data under the general obligation laid down by FOISA. Accordingly, the legitimate interests of Mr Pearson must outweigh the rights and freedoms or legitimate interests of the individual(s) concerned before condition 6 will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that the Council was correct to refuse to disclose the personal data to Mr Pearson.

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

46. Mr Pearson submitted that he was interested in seeing what comments other members of the public might have made on the issue of the housing policy.
47. The Commissioner recognises that Mr Pearson does have a personal interest in obtaining such comments, in order to gauge whether or not they may support his own views (on a matter in respect of which the Commissioner has acknowledged (see above) a degree of public interest). Consequently, the Commissioner accepts that Mr Pearson has a legitimate interest in obtaining the information containing the comments.



Is disclosure necessary for the purposes of those legitimate interests?

48. 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.
49. The Commissioner accepts that Mr Pearson could only fully understand the nature of the comments if he had access to the information contained within the correspondence. She therefore accepts that disclosure is necessary for the purposes of Mr Pearson's legitimate interests.

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

50. The Commissioner must now consider whether disclosure would nevertheless cause unwarranted prejudice to the rights, freedoms and legitimate interests of the data subject(s). As noted above, this involves a balancing exercise between the legitimate interests of Mr Pearson and those of the data subject(s). Only if the legitimate interests of Mr Pearson outweigh those of the correspondent(s) can the information be disclosed without breaching the first data protection principle.
51. Having considered the content of the correspondence and the context in which it was formulated (including the timing, some years before the introduction of FOISA), the Commissioner believes it likely that the individual(s) providing the information would have held a clear expectation that this information would not be made publicly available.
52. The Commissioner also recognises that views formed some time ago may well have changed over the period between their recording and any potential disclosure in response to Mr Pearson's request. Consequently, the views may not still be representative of the correspondent(s).
53. Having balanced Mr Pearson's legitimate interests against the rights, freedoms or legitimate interests of the data subject(s), therefore, the Commissioner has found that the legitimate interests served by disclosure of the correspondence would not outweigh the prejudice that would be caused to the rights, freedoms or legitimate interests of the data subject(s). Therefore, she finds that disclosure would be unwarranted.
54. The Commissioner finds that condition 6 cannot be met in this case. Having accepted that disclosure of the information would lead to unwarranted prejudice to the rights, freedoms and legitimate interests of the data subject(s) as described above, the Commissioner also concludes, for the same reasons, that disclosure of the correspondence would be unfair.
55. As disclosure of the correspondence would be unfair and no Schedule 2 condition could be met, it cannot be disclosed without contravening the first data protection principle. Consequently, disclosure would also be unlawful.
56. The Commissioner has therefore concluded that disclosure of the correspondence would breach the first data protection principle.



Section 25(1) – Information otherwise accessible

57. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25(1) is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
58. The key question to be considered, therefore, is whether the information being withheld under this exemption is (and was, at the time the Council dealt with Mr Pearson's request) reasonably accessible to Mr Pearson.
59. The Council applied section 25 of FOISA to various documents on the grounds that they were otherwise available, either via the Council's website or in Paisley Library.
60. The investigating officer contacted Paisley Library to confirm that it did hold certain documents referred to by the Council in its review response to Mr Pearson. The Council thereafter obtained these documents from Paisley Library and provided copies to Mr Pearson.
61. The Commissioner additionally notes that the investigating officer, on checking the Council's website, was unable to access some of the documents which the Council had stated were accessible in this way. The Council thereafter supplied these documents to Mr Pearson and apologised for broken website links and for the difficulty in locating the information.
62. As a result, the Commissioner concludes that the Council failed to comply with section 1(1) of FOISA in withholding the information mentioned in the preceding paragraph, which could not be deemed to be reasonably accessible. All of this information having been provided to Mr Pearson in hard copy during the investigation, the Commissioner does not require the Council to take any further action in this connection.

Section 1(1) of FOISA – General entitlement

63. Section 1(1) of FOISA creates a general entitlement to access information held by a Scottish public authority (subject to the application of any exemptions in Part 2 of FOISA, and any other relevant provision in Part 1).
64. In order to comply with section 1(1), an authority must therefore take steps to identify all information falling within the scope of a request, and provide it to the applicant, unless it is exempt from disclosure under Part 2 of FOISA, or otherwise subject to one or more of the provisions set out in Part 1 of FOISA.
65. In this case, when prompted during the investigation to undertake further searches for CMT meeting minutes which discussed the illegal housing policy, the Council reiterated that it did not hold any such minutes and that the illegal housing policy had never been an agenda item at meetings of the CMT.



66. The Council explained that CMT minutes were not made available on its website, but that it had provided copies of the CMT minutes for the whole of 2004 to Mr Pearson, in response to a previous information request he had made in early 2011. The Council forwarded the Commissioner a copy of the email and attachments sent to Mr Pearson in this regard. The Council went on to explain that it had carried out further searches of all the CMT minutes it held, from 2003 to 2010 inclusive. It described the searches undertaken and confirmed that it had not found any mention of the illegal housing policy.
67. While the Council considers that it has now located all relevant information, Mr Pearson is of the view that the Council should hold further relevant CMT minutes which have not yet been supplied to him.
68. The Commissioner is aware that Mr Pearson could, if he so chose, make new information requests for the CMT minutes for the years 2003 to 2012 (excepting those from 2004, which he already has), should he wish to scrutinise these minutes for any mention of the illegal housing policy. In the light of this, the Commissioner is of the view that the Council would have little reason to fail to declare at this stage any relevant information within these minutes that might fall within the scope of Mr Pearson's request. In any event, she is satisfied with the Council's submissions on the nature and extent of the searches undertaken.
69. Having considered all relevant submissions and the terms and context of Mr Pearson's request, the Commissioner concludes, on balance, that the Council does not hold any further information falling within the scope of that request.

DECISION

The Commissioner finds that Renfrewshire 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 Pearson.

She finds that the Council complied with Part 1 by correctly withholding information under sections 25(1), 36(1) and 38(1)(b) of FOISA.

However, she also finds that the Council wrongly withheld information under sections 25(1) and 36(1) of FOISA and, in doing this, breached Part 1 (and in particular section 1(1)) of FOISA.

The Commissioner requires the Council to provide Mr Pearson with the information incorrectly withheld under section 36(1) (which will be provided to the Council with this decision) by 21 January 2013. The information wrongly withheld under section 25(1) having been supplied to Mr Pearson during the investigation, the Commissioner does not require the Council to take any action in respect of that information.

Decision 199/2012
Mr Gary Pearson
and Renfrewshire Council



Appeal

Should either Mr Pearson or Renfrewshire 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.

Margaret Keyse
Head of Enforcement
4 December 2012



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 –

- (a) section 25;

...

- (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.



25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

36 Confidentiality

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

...

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.

...

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