

Decision Notice

Decision 115/2016: Mr X and Leisure & Culture Dundee

Agreement between Dundee Ice Arena and Ice Coaching Elite

Reference No: 201501833

Decision Date: 19 May 2016



Scottish Information
Commissioner

Summary

On 18 May 2015, Mr X asked Leisure & Culture Dundee (LACD) for information concerning any agreement between Dundee Ice Arena and Ice Coaching Elite (ICE) for the provision of figure skating coaching in Dundee.

LACD withheld the information under sections 33(1)(b) and 38(1)(b) of FOISA.

The Commissioner investigated and found that LACD had wrongly withheld some information as commercially sensitive under section 33(1)(b). She required LACD to disclose that information to Mr X. The Commissioner accepted that LACD was entitled to withhold other information. The Commissioner also found that LACD failed to give Mr X adequate advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 15 (Duty to provide advice and assistance); 33(1)(b) (Commercial interest and the economy); 38(1)(b), (2)(a)(i), (2)(b) and (5) (definitions of “data protection principles”, “data subject” and “personal information”) (Personal information)

Data Protection Act 1998 (the DPA) sections 1(1) Basic interpretative provision) (definition of personal data); Schedule 1 (The data protection principles, Part 1 – the principles) (the first data protection principle); Schedule 2 (Conditions relevant for the 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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 18 May 2015, Mr X made a request for information to LACD. The information requested was as follows:

What has been agreed between Dundee Ice Arena and Ice Coaching Elite (or successors, alias etc) for the provision of figure skating coaching in Dundee. I would prefer to have a copy of any relevant documentation. If no agreement exists, then under what terms is coaching being supplied by Ice Coaching Elite, i.e. what is happening and what is the arrangement between the parties? Minutes of any meetings where arrangements were discussed should also be made available.

Furthermore, could you please give me the following information:

How much does Dundee Ice Arena pay Ice Coaching Elite for the provision of coaches for the Learn to Skate programme, including Snow Babies? Or what is the recognised value of such provision if it is offset against coaching ice rent?

How much is the hourly charge for the figure skating ice hire throughout the different times of the day and different days of the week?

2. LACD responded on 12 June 2015. LACD withheld the information, which it considered exempt from disclosure under section 33(1)(b) of FOISA. LACD considered disclosure of the information would, or would be likely to, prejudice substantially the commercial interests of itself and ICE.
3. On 9 July 2015, Mr X wrote to LACD requesting a review of its decision. Mr X did not accept that all of the requested information could be detrimental to the commercial interest of either party and did not consider this had been demonstrated by LACD in its response.
4. LACD notified Mr X of the outcome of its review on 24 July 2015. LACD upheld its earlier decision without modification.
5. On 6 October 2015, Mr X wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr X stated he was dissatisfied with the outcome of LACD's review because he did not consider all of the information requested was exempt from disclosure.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr X made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 16 October 2015, LACD was notified in writing that Mr X had made a valid application. LACD was asked to send the Commissioner the information withheld from Mr X. LACD provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. LACD was invited to comment on this application and answer specific questions. It was asked to explain its reliance on section 33(1)(b) of FOISA. LACD was also asked to explain the searches it had undertaken in order to locate and retrieve all information falling within the scope of Mr X's request.
9. LACD provided submissions to the investigating officer. LACD also confirmed that it had carried out additional searches and had retrieved further information falling within the scope of Mr X's request. LACD provided copies of this information to the investigating officer.
10. During the investigation, LACD also applied the exemption in section 38(1)(b) of FOISA to some of the information. This was on the basis that it comprised the personal data of individuals, the disclosure of which would breach the first data protection principle.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr X and LACD. She is satisfied that no matter of relevance has been overlooked.

Section 33(1)(b) - Commercial interests and the economy

12. The information withheld under this exemption comprises the current ice and coaching rental charges agreed between ICE and Dundee Ice Arena, and historic information concerning the initial arrangements for the provision of coaching by ICE. Having considered LACD's

submissions, the Commissioner is satisfied that there is no formal concluded agreement relating to the provision of coaching.

13. LACD submitted that all of the information sought by Mr X was exempt from disclosure in terms of section 33(1)(b) of FOISA. This provides that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of any person (including a Scottish public authority). In this case, LACD submitted that disclosure of the information would damage its own and ICE's commercial interests.
14. Section 33(1)(b) of FOISA is a qualified exemption and is therefore subject to the public interest test in section 2(1)(b).
15. There are certain elements which an authority must demonstrate are present when relying on this exemption. In particular, it must indicate whose commercial interests would (or would be likely to) be harmed by disclosure, the nature of those commercial interests and how those interests would (or would be likely to) be prejudiced substantially by disclosure. The prejudice must be substantial: in other words, of real and demonstrable significance.
16. Having considered LACD's submissions, the Commissioner is satisfied that the interests that have been identified are commercial interests for the purposes of this exemption. The withheld information concerns the provision and purchase of a commercial service (ice skating coaching), agreed between a contractor and a Scottish public authority.
17. The Commissioner must now go on to consider whether the commercial interests identified would, or would be likely to, be prejudiced substantially by the disclosure of the information withheld. As described above, such prejudice must be at least likely before the exemption can apply.
18. In relation to its own commercial interests, LACD explained that, when the Ice Arena was first opened, it was operated by Dundee Ice Arena Ltd, a charitable company. At that time, the Ice Arena hired figure skating coaches directly. The Ice Arena was subsequently approached by ICE, which LACD described as an internationally recognised organisation with a reputation for coaching excellence. LACD stated that ICE's coaches were the reason the Ice Arena had a national reputation for skating coaching and attracted many talented skaters.
19. LACD stated that ICE had agreed to take block bookings of early morning and very late evening time slots (when the ice was not in demand for other uses) in order to allow skaters the necessary time to hone their skills to the elite level required for national competitions. LACD explained that these block bookings had been provided at a slight reduction to the normal rate. LACD also stated that this arrangement had worked well for Dundee Ice Arena in ensuring that it hosted some of the best ice skaters in Britain. It provided further submissions in relation to this perceived risk, which the Commissioner cannot reproduce here.
20. LACD explained concerns that ICE might consider leaving Dundee. LACD stated that this caused it grave concern regarding its reputation for the quality of coaching at the Ice Arena, which was valuable to it and would be a serious loss. In LACD's view, if ICE were to leave Dundee Ice Arena, the top skaters coached by ICE would leave also.
21. In relation to ICE's commercial interests, LACD noted that ICE has a business model of operation, which it believed would be copied if the withheld information were to be disclosed.

22. LACD stated that ICE believed competitors would be able to undercut the service it provided either by charging less to Dundee Ice Arena or by paying more for the ice. LACD submitted that this would prejudice ICE's commercial interests very substantially and could lead to its business model collapsing.
23. LACD also stated that, in ICE's view, if its income and expenditure were exposed in this way, a competitor might be able to poach some of its coaches and this would also prejudice its commercial interests substantially.
24. In Mr X's view, LACD had not demonstrated how disclosure of the information was detrimental to the commercial interest of either party. He noted that the original agreement was undertaken many years ago and therefore much time had elapsed, thereby rendering the original contract value (at least) immaterial.
25. Mr X also submitted that no information relating to the nature of the relationship between LACD and ICE had been offered, let alone the terms of any engagement.
26. The Commissioner has considered all of the arguments put forward by LACD and Mr X. As in any case, the Commissioner must consider the position as it stood at the point when LACD notified Mr X of the outcome of its review, on 24 July 2015.
27. In this case, the Commissioner accepts that disclosure of the withheld information would allow some insight into the history of the arrangements between Dundee Ice Arena and ICE. It would also allow scrutiny of the actions and financial arrangements of an organisation designated as a public authority for the purposes of FOISA.
28. The Commissioner also recognises that disclosure of the current ice and coaching rental charges (document 11) would enable ICE's competitors to tailor their prices to match, or undercut, those of ICE. In the Commissioner's view, this would be likely to prejudice ICE's commercial interests substantially.
29. Additionally, the Commissioner notes that some of the information provided by ICE on training methodology (document 6) is essentially part of ICE's business model. She accepts that disclosure of this information, too, would be likely to prejudice ICE's commercial interests substantially, as it would allow insight into its training philosophy and practices and could be replicated by competitors. Again, this could be used as part of a strategy to undercut its prices.
30. The Commissioner is satisfied that, at the time LACD dealt with Mr X's requirement for review, this information was of sufficient commercial relevance to engage the exemption in section 33(1)(b) of FOISA and the exemption was correctly applied on that basis.
31. However, the Commissioner is not persuaded that the exemption is engaged in relation to the remaining information withheld under section 33(1)(b).
32. The Commissioner notes that the information in question was some eleven years old at the time of Mr X's request and its subsequent handling by LACD, and concerned early proposals and discussions relating to coaching and the hire of Dundee Ice Arena. The Commissioner is not persuaded by LACD's submissions that disclosure of this historical financial information would, or would be likely to, substantially prejudice ICE's ability to operate in a current competitive market. LACD has not provided evidence of any link between the historic figures and the present financial structure.
33. Similarly, the Commissioner is not satisfied that LACD has provided any evidence explaining how disclosure of this information would prejudice its own commercial interests, beyond

expressing concern that ICE might choose to leave Dundee. ICE's departure may be prejudicial to LACD's commercial interests, but the Commissioner is not satisfied that LACD has demonstrated a link between disclosure and this happening.

34. In the absence of evidence supporting risks of the kind described by LACD, the Commissioner cannot accept that the disclosure of the remaining withheld information would, or would be likely to, prejudice substantially the commercial interests of either LACD or ICE. Having considered all of the relevant submissions, the Commissioner does not accept that LACD were correct to withhold this information under the exemption in section 33(1)(b) of FOISA.
35. The Commissioner now requires LACD to disclose this information (where no other exemption has been applied) to Mr X.

The public interest test

36. As the Commissioner has found the exemption in section 33(1)(b) was correctly applied to the information in documents 6 and 11, she has gone on to consider the public interest test in section 2(1)(b) of FOISA. This requires consideration of whether, in all the circumstances of the case, the public interest in disclosing the withheld information is outweighed by the public interest in maintaining the exemption in section 33(1)(b).
37. LACD stated that it had held three separate discussions with ICE prior to issuing a response to the request. (These meetings were not minuted.) LACD stated that ICE's position was clear – they operated as a private company in a competitive field and considered their commercial interests would be prejudiced very substantially by disclosure of the information.
38. LACD emphasised that the provision of professional coaching was very competitive throughout the UK. Only some rinks were in public hands, most being operated privately and therefore not being subject to FOISA. Consequently, the exposure which would be given to ICE's commercial arrangements would be disproportionate to that being given to some of its competitors.
39. Referring to previous decisions of the Commissioner, and given the currency of the commercial information being withheld, it did not believe disclosure would be in the public interest.
40. Mr X considered the public interest favoured disclosing the information. He submitted that LACD was utilising public funds to support the running of the ice rink and parts of those funds related to payments made by way of ice skating activities. He considered disclosure of the information would allow public scrutiny of the ongoing decision-making processes.
41. The Commissioner acknowledges the general public interest in transparency and accountability, particularly in relation to the scrutiny of public finances.
42. On the other hand, the Commissioner accepts that there is a public interest in ensuring that there is fair competition in the commercial environment in which ICE operates. She has already acknowledged the submissions made by LACD in support of maintaining the exemption and has acknowledged the likelihood of substantial commercial prejudice to ICE in this case, in relation to the information in two of the withheld documents.
43. In the Commissioner's view, it is in the public interest for an organisation such as ICE to be able to trade fairly and provide a viable service in a competitive market. The Commissioner also considers it is in the public interest that ICE is not treated unfairly simply as a result of

having entered a contractual arrangement with a public body, with a consequential adverse impact on its ability to participate effectively in a competitive market.

44. Having concluded that disclosure in this case would, or would be likely to, cause substantial harm to ICE's commercial interests, the Commissioner recognises that it would be contrary to the public interest to place ICE in a disadvantageous position with respect to its competitors.
45. The Commissioner has considered all of the factors set out above. While there will be circumstances in which the public interest requires the disclosure of information even if substantial prejudice might result, the Commissioner does not believe it would be justified in this case.
46. Having balanced the public interest for and against disclosure, the Commissioner has concluded that, in all the circumstances of the case, the public interest in maintaining the exemption in section 33(1)(b) outweighs that in disclosure of the information under consideration. The Commissioner therefore finds that LACD was entitled to withhold the information in documents 6 and 11 under section 33(1)(b) of FOISA.

Section 38(1)(b) – Personal information

47. The Commissioner will now go on to consider whether any personal data contained within the information she has not accepted as exempt from disclosure under section 33(1)(b) is exempt under section 38(1)(b) of FOISA.
48. LACD applied the exemption in section 38(1)(b) to all third party personal data contained within the withheld information. It was not applied to details of LACD staff. LACD considered disclosure of this information would contravene the first data protection principle and that none of the conditions in Schedule 2 to the DPA could be met.
49. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or, as appropriate, section 38(2)(b), exempts information from disclosure if it is "personal data" (as defined in 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.
50. The exemption in section 38(1)(b) of FOISA is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.
51. In order to rely on this exemption, LACD must show that the information being withheld is personal data for the purposes of the DPA and that its disclosure into the public domain (which is the effect of disclosure under FOISA) would contravene one or more of the data protection principles in Schedule 1.

Is the information under consideration personal data?

52. Personal data are 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.)
53. The Commissioner is satisfied that the information under consideration is personal data, in line with the definition in part (a) of section 1(1) of the DPA. Living individuals, specifically the coaches, can be identified from this information. Given its nature (names and addresses in particular), the Commissioner is satisfied that the information relates to these individuals.

Would disclosure contravene the first data protection principle?

54. As noted above, LACD submitted that disclosing this information would breach the first data protection principle. This 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. The processing in this case would be making the information publicly available in response to Mr X's request.
55. 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. A condition in Schedule 3 is also required if the information is sensitive personal data, but the Commissioner is satisfied that none of the information under consideration falls into this category.

Can any of the conditions in Schedule 2 be met?

56. When considering the conditions in Schedule 2, the Commissioner has noted Lord Hope's comment in the case of *Common Services Agency v Scottish Information Commissioner [2008] UKHL 47*¹, that the conditions require careful treatment in the context of a request for information under FOISA. 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 (i.e. the person or persons to whom the data relate).
57. It appears to the Commissioner that condition 6 in Schedule 2 is the only one which might permit disclosure to Mr X. In any event, neither Mr X nor LACD have suggested that any other condition would be relevant.
58. Condition 6 allows personal data to be processed where that 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.
59. There are, therefore, a number of tests which must be met before condition 6(1) can apply. These are:
- Does Mr X have a legitimate interest in obtaining the personal data?
 - If so, is the disclosure necessary to achieve those legitimate interests? In other words, is disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate interest be achieved by means which interfere less with the privacy of the data subjects?
 - Even if disclosure is necessary for those purposes, would it nevertheless be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects? As noted by Lord Hope in the above judgment, there is no presumption in favour of disclosure of personal data under the general obligation laid down in FOISA. The legitimate interests of Mr X must outweigh the rights and freedoms or legitimate interests of the data subject before condition 6 will permit the personal data to be disclosed

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

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

60. There is no definition in the DPA of what constitutes a "legitimate interest." The Commissioner takes the view that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. The Commissioner's guidance on section 38 of FOISA² states:

In some cases, the legitimate interest might be personal to the applicant - e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as the scrutiny of the actions of public bodies or public safety

61. LACD submitted that Mr X did not have a legitimate interest in obtaining the withheld personal data, as those individuals were entitled to keep their personal information private.

62. In the Commissioner's view, Mr X (and the wider public) has a legitimate interest in obtaining the withheld personal data under consideration. Mr X has shown that he has a personal interest, extending beyond mere curiosity, in the arrangements for ice skating coaching at Dundee Ice Arena. The Commissioner also considers there is a wider public interest in knowing who was involved in the negotiations which set up these arrangements.

Is disclosure necessary to achieve those legitimate interests?

63. Having concluded that Mr X has a legitimate interest in obtaining the personal data under consideration, the Commissioner must now consider whether disclosure of the personal data is necessary to achieve those legitimate aims, or whether these legitimate aims can be achieved by means which interfere less with the privacy of the data subject.

64. Having reviewed the withheld information, the Commissioner cannot identify any other viable means of meeting Mr X's interests which would interfere less with the privacy of the data subject than providing the withheld personal data. For this reason, the Commissioner is satisfied that disclosure of the information is necessary for the purposes of Mr X's legitimate interests.

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

65. The Commissioner is satisfied that disclosure of the withheld personal data is necessary to fulfil Mr X's legitimate interests, but must now consider whether that disclosure would 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 X and the data subjects in question. Only if the legitimate interests of Mr X outweigh those of the data subjects can the information be disclosed without breaching the first data protection principle.

66. In the Commissioner's briefing on the personal information exemption, she notes a number of factors which should be taken into account in carrying out the balancing exercise. These include:

- whether the information relates to an 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)
- the potential harm or distress that may be caused by disclosure
- whether the individual objected to the disclosure

² <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.aspx>

- the reasonable expectations of the individual as to whether the information should be disclosed
67. LACD stated that the data subjects were entitled to their privacy and their personal information not being disclosed to Mr X.
68. The Commissioner has considered all of the submissions made to her when balancing the legitimate interest in this case. The Commissioner considers there would likely be no expectation on the part of the data subjects that their personal data would be disclosed into the public domain. She accepts in the circumstances that the information relates to their private lives.
69. On balance, while the Commissioner accepts that the disclosure would be necessary to fulfil Mr X's legitimate interests, she does not agree that this outweighs the prejudice that would be caused to these data subjects' rights, freedoms and legitimate interests. She considers such prejudice would be unwarranted in relation to these individuals. Consequently, the Commissioner is satisfied that condition 6 of Schedule 2 is not met in this case in relation to these individuals in relation to this type of information.
70. Having concluded that disclosure of the withheld information would lead to unwarranted prejudice to the rights, freedoms and legitimate interests of these data subjects, the Commissioner must also conclude that disclosure would be unfair. As condition 6 cannot be met, she would also regard disclosure as unlawful. In all the circumstances, therefore, she finds that disclosure would breach the first data protection principle and that this information was properly withheld under section 38(1)(b) of FOISA.

Section 15 - Duty to provide advice and assistance

71. Section 15(1) of FOISA requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
72. It is clear from Mr X's information request and requirement for review that he expected to be informed whether any agreement existed between Dundee Ice Arena and ICE. In his application to the Commissioner, he expressed dissatisfaction that LACD had not answered this point.
73. In its submissions to the Commissioner, LACD stated that there was no written agreement. It noted that a legal firm had been employed to draw up a formal contract between the parties in 2004, but this had never been signed. LACD also explained that there had been no need for formal meetings to agree fees with ICE, so there were no minutes to produce.
74. In the Commissioner's view, it would have been helpful if LACD had informed Mr X of this fact in its correspondence with him. In the Commissioner's view, this would at least have clarified the position to some extent. The review outcome made no attempt to explain this to him, despite the fact he specifically raised the matter in his requirement for review.
75. In all the circumstances therefore, the Commissioner is not satisfied that LACD met its duties under section 15(1) of FOISA in dealing with Mr X's information request.
76. The Commissioner does not require LACD to take any action on this occasion, but would ask it to be aware of the duty to provide advice and assistance to requesters when dealing with information requests in future.

Conclusion

77. As noted above, LACD did not identify all of the information it held which fell within the scope of Mr X's request until the Commissioner's investigation had commenced. By failing initially to identify all of the information which fell within the scope of Mr X's request, the Commissioner finds that LACD breached Part 1 of FOISA, in particular section 1(1), when responding to Mr X's requirement for review.
78. The Commissioner requires LACD to disclose the information that is not exempt from disclosure under sections 33(1)(b) and 38(1)(b) of FOISA.
79. The Commissioner accepts that LACD was entitled to withhold the information in documents 6 and 11, and the personal data of the coaches in the remaining documents, under the exemptions in sections 33(1)(b) and 38(1)(b) of FOISA (all as explained in further detail above).
80. With this decision, the Commissioner will provide LACD with a marked up copy of the withheld information, indicating the personal data that should be redacted.

Decision

The Commissioner finds that Leisure & Culture Dundee (LACD) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr X.

The Commissioner finds that LACD was entitled to withhold some information, under the exemptions in sections 33(1)(b) and 38(1)(b) of FOISA.

However, the Commissioner finds that LACD incorrectly withheld the remainder of the information under the exemption in sections 33(1)(b), and to that extent failed to comply with section 1(1) of FOISA.

The Commissioner also finds that LACD failed to comply with the requirements of section 15(1) of FOISA in responding to Mr X's request.

The Commissioner requires LACD to disclose to Mr X the withheld information, with the exception of that in documents 6 and 11 and the personal data she has found to be exempt under section 38(1)(b) of FOISA, by **4 July 2016**.

Appeal

Should either Mr X or Leisure & Culture Dundee wish to appeal against this decision, they have the right to 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.

Enforcement

If LACD fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that LACD has failed to comply. The Court has the right to inquire into the matter and may deal with LACD as if it had committed a contempt of court.

**Margaret Keyse
Head of Enforcement**

19 May 2016

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

- (e) in subsection (1) of section 38 –

...

- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

15 Duty to provide advice and assistance

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

33 Commercial interests and the economy

(1) Information is exempt information if-

...

- (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

...

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

...

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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