

Decision Notice



Decision 033/2011 Paul Hutcheon of the Sunday Herald and the Scottish Ministers

Performance related pay / bonuses paid to the Permanent Secretary

Reference No: 201001087
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www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

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Summary

Mr Paul Hutcheon, Scottish Political Editor of the Sunday Herald (Mr Hutcheon) requested from the Scottish Ministers (the Ministers) information about the bonuses/performance-related pay in each year since 2003/04 for the (then) Permanent Secretary to the Scottish Government. The Ministers responded by withholding the information under section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA), which applies to personal data, disclosure of which would contravene any of the data protection principles. Following a review, Mr Hutcheon remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had failed to deal with Mr Hutcheon's request for information in accordance with Part 1 of FOISA, by incorrectly withholding the information under section 38(1)(b). He required the Ministers to disclose the withheld 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) and (2)(e)(ii) (Effect of exemptions); 38(1)(b), 2(a)(i) and (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)

European Convention on Human Rights (ECHR) article 8 (Right to respect for private and family life)

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.

Information Commissioner's Decision Notice FS50262907 (City of London Police)

Background

1. On 5 January 2010, Mr Hutcheon, the Scottish Political Editor of the Sunday Herald newspaper, emailed the Ministers requesting the following information:



how much Sir John Elvidge [at that time, the Permanent Secretary of the Scottish Government] had been paid in bonuses/performance related pay for every financial year since 2003/04

Mr Hutcheon highlighted that Scottish Enterprise publishes how much its Executive Board receive in bonus payments in every year.

2. The Ministers responded on 6 April 2010. They withheld the specific information requested by Mr Hutcheon on the grounds that it was personal data and exempt from disclosure under section 38(1)(b) of FOISA. However, the Ministers noted that information on the combined salary and performance pay for the Permanent Secretary (expressed in terms of £5,000 bands), was publicly available in the Scottish Government's Consolidated Accounts for the years 2004 to 2009. They provided Mr Hutcheon with links to the websites providing that information.
3. On 13 April 2010, Mr Hutcheon emailed to the Ministers requesting a review of their decision. In particular, Mr Hutcheon drew the Ministers' attention to the fact that a number of other public authorities disclosed details of their Chief Executives' bonuses or performance related pay. He asked why the Permanent Secretary should be any different. He argued that there was a clear public interest in bonuses paid to public servants at the higher end of the income scale, and indicated that he did not believe the Scottish Government was justified in withholding these details.
4. The Ministers notified Mr Hutcheon of the outcome of their review on 5 May 2010. They upheld their previous decision to apply the exemption in section 38(1)(b) of FOISA to the Permanent Secretary's performance related pay for the years prior to 2009. They noted, however, that the fact that the Permanent Secretary had waived his right to receive any performance related pay in 2009 was in the public domain, and so the requested information was available in relation to that year.
5. The Ministers noted that the arrangements for the disclosure of performance related pay information in respect of individual members of the Senior Civil Service within the Scottish Government are subject to Cabinet Office guidance which applies to all parts of the Home Civil Service. They noted Mr Hutcheon's reference to disclosure of information about senior executives' performance related pay by other public authorities, but maintained that this was did not create a precedent requiring disclosure in this case.
6. On 26 May 2010, Mr Hutcheon emailed the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. 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

8. On 9 June 2010, the Ministers were notified in writing that an application had been received from Mr Hutcheon and were asked to provide the Commissioner with the information withheld from him. The Ministers responded with the information requested and the case was then allocated to an investigating officer.
9. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their application of the exemption in section 38(1)(b) of FOISA. The Ministers provided their submissions in response on 19 July 2010. They also provided further background information and comments in response to follow-up questions from the investigating officer.
10. Mr Hutcheon was also asked to provide submissions on the matters raised by this case. The submissions received from Mr Hutcheon and the Ministers are summarised, where relevant, below.

Commissioner's analysis and findings

11. 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 the Ministers and is satisfied that no matter of relevance has been overlooked.
12. As in any case, the Commissioner has considered the matters raised by Mr Hutcheon's application in the circumstances that existed at the time when the Ministers notified him of the outcome of their review. In this case, that point is 5 May 2010.
13. Sir John Elvidge was the Permanent Secretary to the Scottish Government from July 2003 until he retired from this post in June 2010. He still held that post at the time when the Ministers conducted their review of their handling of Mr Hutcheon's information request. Sir John Elvidge will be referred to as the Permanent Secretary in what follows.

Withheld information

14. The information under consideration in what follows is the amount paid in performance related pay to the Permanent Secretary in each year from 2004 to 2008. Since it was public knowledge that the Permanent Secretary waived his right to any performance related pay in 2009, the Ministers highlighted this to Mr Hutcheon, with the effect of disclosing that no bonus was paid in that year.



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

15. Section 38(1)(b), 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.
16. 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.
17. The Ministers have submitted that the information withheld from Mr Hutcheon is the personal data of the Permanent Secretary, disclosure of which would contravene the first data protection principle.

Is the information personal data?

18. 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).
19. The Commissioner accepts that the information requested by Mr Hutcheon, by indicating performance related pay/bonuses paid to the Permanent Secretary, clearly relates to him. The Permanent Secretary can be identified from that information either alone or in conjunction with other information in possession of the Ministers. The Commissioner is therefore satisfied that the information under consideration is personal data.
20. The Commissioner must go on to consider whether disclosure of this personal data would contravene the first data protection principle.

Would disclosure contravene the first data protection principle?

21. The Ministers argued that disclosure of the withheld information would breach the first data protection principle.
22. 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 Hutcheon's information request.



23. The Commissioner has considered the definition of sensitive personal data in section 2 of the DPA and is satisfied in this case that none of the personal data which has been withheld constitutes sensitive personal data. As a consequence, no Schedule 3 conditions require to be met in this case.
24. 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 which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.

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

25. 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 will then go on to consider whether the disclosure of this personal data would otherwise be fair and lawful.
26. In their submissions, the Ministers asserted that, of the conditions set out in Schedule 2 to the DPA, only the sixth might potentially apply, but that they considered it was not met in this case.
27. During the investigation, steps were taken to establish whether condition 1 (which applies where the data subject consents to the processing of their personal data) might be met in this case. Following these investigations, the Commissioner is satisfied that condition 1 cannot be met, and so condition 6 is the only one that might apply in the circumstances of this case.
28. 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 (i.e. the individual to whom the data relates).
29. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
 - a. Does Mr Hutcheon 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?
 - c. Even if the processing is necessary for Mr Hutcheon's legitimate interests, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the individual 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 Hutcheon must outweigh the rights and freedoms or legitimate interests of the individual concerned before condition 6 will



permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that the Ministers were correct to refuse to disclose the personal data to Mr Hutcheon.

Does Mr Hutcheon have a legitimate interest in obtaining the information?

30. Mr Hutcheon submitted that there is a legitimate interest in the public knowing about the bonuses received by one of the top public servants in Scotland, and the degree to which his remuneration includes performance related pay on top of basic salary.
31. The Ministers noted Mr Hutcheon's profession as a journalist recognised that it was likely that he believed that there was a public interest in disclosure of the information under consideration. They did not indicate whether they accepted that Mr Hutcheon has a legitimate interest in obtaining the information under consideration.
32. The Commissioner accepts that Mr Hutcheon, as a journalist and a member of the public has a legitimate interest in obtaining the withheld information. Remuneration of senior public servants is a matter of legitimate public concern, particularly in the current economic climate.
33. Disclosure of the information under consideration in this case would allow fuller understanding of the remuneration of the most senior civil servant in Scotland. This would in turn allow a more fully informed debate about whether his remuneration represents an appropriate use of public funds. Disclosure of the value of the bonuses would also enable comparison of the practice of the Scottish Government with respect to the remuneration of its most senior employee with other bodies within the public and private sectors.
34. He notes too that Scottish Ministers have themselves prominently raised the issue of bonuses paid to senior public authority officials. The Cabinet Secretary for Finance and Sustainable Growth in his foreword to *Public Sector Pay Policy: Policy for Senior Appointments 2009-10: Chief Executives Chairs and Members* said "There has also been keen and legitimate interest in the reward packages and particularly bonuses (non-consolidated performance payments) paid to senior staff across the country." and called upon "Chairs of public bodies covered by this policy to invite Chief Executives to consider, in the light of the current economic climate, waiving, on a voluntary basis, some or all of any bonus that may be due in to them in 2009-10."¹

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

35. 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.

¹ <http://www.scotland.gov.uk/Publications/2009/06/19154649/1>



36. The Commissioner notes that the Ministers highlighted to Mr Hutcheon that information on the combined salary and performance pay for the Permanent Secretary was already publicly available within the Scottish Government's consolidated accounts. This information is made available only as an approximate value, expressed in terms of £5,000 bands.
37. While the Commissioner recognises that this information contributes to some extent to the pursuit of the legitimate interests identified by Mr Hutcheon, the publicly accessible information is limited and would not enable Mr Hutcheon (or other members of the public) to consider the exact sum paid to the Permanent Secretary in a given year. Nor does it provide any indication of the amount paid to the Permanent Secretary in performance related bonuses.
38. In this case, the Commissioner considers that access to this published information is not sufficient to enable Mr Hutcheon (or other members of the public) to pursue the legitimate interests he has identified. He can identify no viable means of meeting the legitimate interest identified by Mr Hutcheon which would interfere less with the privacy of the Permanent Secretary. Therefore, he is satisfied in all the circumstances that disclosure of the information under consideration is necessary for the purposes of the legitimate interest identified by Mr Hutcheon.

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

39. The Commissioner must now consider whether disclosure would nevertheless cause unwarranted prejudice to the rights, freedoms and legitimate interests of the Permanent Secretary. This involves a balancing exercise between the legitimate interests of Mr Hutcheon and those of the data subject. Only if the legitimate interests of Mr Hutcheon outweigh those of the data subject can the information be disclosed without breaching the first data protection principle.
40. The Commissioner's guidance on the exemptions in section 38, identifies 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 may be caused by the disclosure;
 - c. whether the individual has objected to the disclosure;
 - d. the reasonable expectations of the individual as to whether the information would be disclosed.



41. In considering this matter, the Commissioner has also had regard to the guidance² issued by the Information Commissioner, who has responsibility for oversight of the DPA, entitled “Public Sector Salaries: how and when to disclose” (the ICO guidance). This guidance indicates that those who are paid from the public purse should expect some information about their salaries to be made public. However, the guidance also acknowledges that salary information relates to personal financial circumstances and deserves some protection.
42. The guidance indicates that there will always be some legitimate interest in knowing how public money is spent, how public sector salaries compare with those in other areas and how money is distributed between different levels of staff. However, it makes clear that this legitimate interest can often be met via routine disclosure of salary bands, and without individuals’ salary information being disclosed.
43. The ICO guidance identifies situations in which disclosure of the advertised salary band is insufficient to answer legitimate questions. This includes where the pay scales do not disclose the full cost to the authority, such as when there is a significant element of performance related pay or other bonuses is paid. In circumstances where it is appropriate to reveal detail of an individual’s remuneration, the ICO guidance suggests that in most cases, it will be sufficient to release the approximate amount paid to an individual, for example, to the nearest £5,000. The ICO guidance indicates that it will only be in exceptional circumstances that disclosure of an exact salary may be appropriate.
44. The Commissioner has also noted the terms of the decision notice FS50262907³ issued by the Information Commissioner. This decision considered whether honorarium and bonus payments made to the Chief Constable of the City of London Police should be disclosed. Notwithstanding that the bonus scheme concerned contained a confidentiality clause and the Chief Constable had objected to disclosure, the Information Commissioner concluded that disclosure of the approximate value of the bonuses and honorarium payments (in terms of £5000 bands) would not breach the first data protection principle. With respect to the honorarium payments, the Commissioner indicated that he would have required disclosure of the precise value, had previous disclosures not had effect that doing so would reveal bonus payments made to another employee.
45. The Information Commissioner highlighted the general public interest in openness about payments made to senior public officials, and noted the terms of the guidance referred to above. He also noted that the individual concerned was the most senior ranking police officer in the public authority, and that there was a clear legitimate public interest in the information being provided to enable the public to assess whether public funds are being used appropriately.

² http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/salary_disclosure.pdf

³ http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50262907.pdf



Submissions on the balance of legitimate interests

46. The Ministers have recognised that there is a lesser expectation of confidentiality for those at a senior level in public office than for less senior employees, but noted that the specific bonus/performance pay information is seen as personal because it would reveal the outcomes of performance review. They maintained that the disclosure of the withheld information was unwarranted by reason of prejudice to the rights and freedoms and legitimate interests of the Permanent Secretary.
47. They maintained that the members of the Strategic Board (the management group headed by the Permanent Secretary) would have no expectation that information so specific as to their rewards would be released into the public domain, and they would not have any expectation of disclosure beyond the publication of the figures already mentioned in the Consolidated Accounts.
48. The Ministers went on to argue that disclosure would cause unwarranted distress to the data subject and that the obligations of the Ministers as a data controller, alongside Article 8 of the European Convention on Human Rights (ECHR) and the general law of confidentiality should take precedence over any possible public interest in disclosure. They maintained that release posed a real and significant possibility of prejudice to the Permanent Secretary and his family's rights and legitimate interests in respect for private and family life.
49. Mr Hutcheon has indicated that he does not consider that disclosure of the information under consideration would be an unwarranted intrusion into the privacy of the Permanent Secretary. He has highlighted that a number of other public authorities have published details of bonuses paid to senior executives.

Conclusions with respect to the balancing exercise

50. When conducting the balancing exercise required by condition 6, the Commissioner has considered all of the comments made by the Ministers and Mr Hutcheon.
51. He recognises that the information under consideration relates to the personal finances of the Permanent Secretary. He also notes that the Permanent Secretary's expectations as to whether this information would be disclosed in response to an information request will have been formed by the approach to the disclosure of such information taken by the Scottish Government (which is consistent with practice across the whole of the Home Civil Service). He therefore accepts that the Permanent Secretary might reasonably have expected that this information would not be disclosed in response to Mr Hutcheon's information request.
52. He accepts that disclosure would involve a degree of intrusion into the privacy of the Permanent Secretary, not only by revealing the value of performance related pay/bonuses that he has received, but also by giving some insight into the evaluation of his performance in his role as Permanent Secretary.



53. However, while disclosure of the value of the amount of performance related pay would allow speculation about the level of performance achieved by the Permanent Secretary in the relevant year, the Commissioner notes that it would not give any indication of the overall evaluation of his work, or the extent to which he had achieved relevant objectives.
54. When weighing the intrusion into the privacy of the Permanent Secretary against the legitimate interests of Mr Hutcheon, the Commissioner has given significant weight to the fact that the Permanent Secretary is the most senior civil servant in Scotland. He occupies a role which brings with it significant responsibility for the effective operation of a very large public authority, the work of which affects every household in Scotland. The Commissioner considers that there is a substantial legitimate and public interest in knowing how he is rewarded for his work, thereby allowing consideration of whether this is an appropriate use of public funds, and comparison (even on a limited basis) to the remuneration of senior employees in other public and private sector organisations.
55. In considering the level of intrusion into the privacy of the Permanent Secretary, he has also considered practice elsewhere in the public sector with respect to the disclosure of details of senior executives' remuneration. As Mr Hutcheon pointed out, a number of other public authorities have published precise details of their Chief Executive's remuneration. The Commissioner notes, for example, that the most recent annual reports of both visitscotland and Scottish Enterprise provide details of both the salary and bonuses received by their Chief Executives.
56. The Commissioner accepts the Ministers' point that practice elsewhere does not necessarily create any precedent for disclosure in relation to the Permanent Secretary. However, he considers that developing practice elsewhere in the public sector could only reasonably have (by the time when the Ministers conducted their review) had the effect of weakening any expectations of non-disclosure held by the Permanent Secretary based on the Ministers' approach to the routine disclosure of less detailed information.
57. The Commissioner has given consideration to the Minister's comments regarding the "general law of confidentiality" and Article 8 of the ECHR taking precedence over any public interest in disclosure.
58. Having received no submission from the Ministers which identifies any explicit obligation of confidentiality that arises in relation to the information under consideration, the Commissioner has not given weight to the consideration of "the general law of confidentiality", other than where an obligation of confidentiality would arise under the terms of the DPA or the ECHR.
59. The Commissioner is always mindful of the right to respect for individuals' private and family life provided by Article 8, but he is satisfied in this case (particularly given the absence of any further comments on this point from the Ministers) that disclosure of the information under consideration would not breach this right.



60. Having balanced the legitimate interests of Mr Hutcheon and those of the Permanent Secretary, the Commissioner has concluded that the legitimate interests identified by Mr Hutcheon outweigh any prejudice to the rights and freedoms and legitimate interests of the Permanent Secretary. He is satisfied that disclosure of the withheld information therefore would not be unwarranted, and so condition 6 of schedule 2 of the DPA can be met in this case.

Would disclosure be fair and lawful

61. 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.
62. The Commissioner considers that disclosure would be fair, for the reasons already outlined in relation to condition 6. The Ministers have not put forward any specific arguments as to why the disclosure of the information would be unlawful, although their references to the general law of confidence the rights under Article 8 of the ECHR could be relevant to this test. For the reasons set out above, the Commissioner is satisfied that disclosure would not be unlawful on these grounds. The Commissioner can identify no other reason why disclosure should be considered unlawful.
63. Having found disclosure of the withheld information 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.
64. The Commissioner therefore concludes that the exemption in section 38(1)(b) has been wrongly applied by the Ministers to the withheld information.

DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Paul Hutcheon. He finds that the performance related pay/bonus payments made to the Permanent Secretary were not exempt from disclosure under section 38(1)(b) of FOISA, and so by withholding this information, the Ministers failed to comply with section 1(1) of FOISA.

The Commissioner requires the Ministers to provide the withheld information to Mr Hutcheon by 8 April 2011.



Appeal

Should either Mr Hutcheon or the Scottish Ministers wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
22 February 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

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

...

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

2 Effect of exemptions

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

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

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

...

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

...

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

...

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.

...

European Convention on Human Rights

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.



2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.