

Decision Notice



Decision 144/2011 Mr Les Webster and the Scottish Ministers

Complaint concerning growth of weeds

Reference No: 201002180

Decision Date: 2 August 2011

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Mr Webster requested from the Scottish Ministers (the Ministers) correspondence relating to a complaint made concerning weed growth on his land. The Ministers found the information to be environmental information as defined within the Environmental Information Regulations 2004 (the EIRs), and so considered the request in terms of those regulations. They refused to supply the information on the grounds that it was personal data, excepted from disclosure under regulation 11 of the EIRs. When asked to review this decision, the Ministers disclosed some of the information to Mr Webster, but maintained their decision to withhold the rest.

Mr Webster remained dissatisfied and applied to the Commissioner for a decision. He questioned whether the information requested was environmental information, and so whether the Ministers had acted correctly in dealing with his request under the EIRs. He also challenged the Ministers' decision to withhold information.

During the course of the investigation, the Ministers disclosed some further information to Mr Webster. They maintained that the information requested by Mr Webster was environmental information, and that the remaining withheld information was excepted from disclosure under regulations 10(4)(d) and (e) and 11(2) of the EIRs.

Following the investigation, the Commissioner found that the information requested by Mr Webster was environmental information, and so the Ministers acted correctly by considering his request in terms of the EIRs. He also found that the Ministers were entitled to withhold the remaining information from Mr Webster in terms of regulation 11(2) of the EIRs, since that information was the personal data of a third party, the disclosure of which would breach the first data protection principle.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions) and 39(2) (Health, safety and the environment)

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation – definitions (a), (b) and (c) of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); 10(3) (Exceptions from duty to make environmental information available); 11(2), (3)(a)(i) and (b) (Personal data)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of "personal data"); 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(1))



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 28 May 2010, Mr Webster wrote a letter to the Ministers' Rural Payments and Inspection Directorate (RPID), which included an information request for all correspondence relating to a complaint which had been made to the RPID concerning weeds growing on Mr Webster's land.
2. The Ministers responded on 30 June 2010 and stated that as they were of the view that the information requested was environmental information, they would deal with the request under the EIRs. They withheld the correspondence on the grounds that regulation 11 was applicable. The Ministers noted that this provides [at regulation 11(1)] that the duty to make available environmental information does not apply where the information includes personal data of which the applicant is the data subject. They also noted that regulation 11[(2) and 3(i)] allows a public authority to withhold information where disclosure would involve making available personal data and would breach any of the data protection principles.
3. On 6 August 2010, Mr Webster wrote to the Ministers requesting a review of their decision. Amongst the points made in his letter, Mr Webster stated that he did not believe that his request should be dealt with under the EIRs, nor that the Ministers were legally entitled to withhold the information from him.
4. The Ministers notified Mr Webster of the outcome of their review on 7 September 2010. They maintained that the information he had requested was environmental information as defined within the EIRs. They explained that section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA) provides an exemption from disclosure which applies to environmental information and requires such requests to be considered under the EIRs.
5. However, the Ministers amended their initial decision, having concluded that some of the previously withheld information was not excepted from disclosure. They disclosed this information, but maintained their decision to withhold the rest in terms of regulation 11.
6. On 19 November 2010, Mr Webster wrote to 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. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
7. The application was validated by establishing that Mr Webster 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 3 December 2010, the Ministers were notified in writing that an application had been received from Mr Webster and were asked to provide the Commissioner with any information withheld from him. The Ministers provided this information (contained within 103 documents), but the accompanying schedule indicated that they were intending to disclose some further information to Mr Webster and were now applying the exceptions in regulations 10(4)(d) and (e) and 11(2) of the EIRs to the remainder of the information. 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 invited to comment on their handling of Mr Webster's information request in terms of the EIRs, and asked to confirm and justify their reliance on any provisions of FOISA and/or the EIRs they considered applicable to the information withheld. The Ministers were also asked to confirm whether they had disclosed any further information to Mr Webster and, if so, to indicate what information had been disclosed.
10. The Ministers responded to this letter, providing their submissions on the matters raised. They confirmed that they intended to disclose further information to Mr Webster, and that they considered the exceptions in regulations 10(4)(d) and (e) and 11(2) of the EIRs to be applicable to the remaining withheld information.
11. The Ministers subsequently provided a copy of a letter sent to Mr Webster dated 22 February 2011 disclosing the additional information to him.
12. Mr Webster was also asked for any comments or submissions he wished to make on the matter and he duly provided these to the Commissioner. He also confirmed receipt of the additional documents disclosed in February 2011, and that the scope of the Commissioner's investigation should be limited to the remaining information still being withheld from him.
13. Both Mr Webster's submissions and those of the Ministers will be considered further in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

14. 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 Webster and the Ministers and is satisfied that no matter of relevance has been overlooked.



The withheld information

15. When providing the information that had been withheld from Mr Webster following their review, the Ministers initially identified 103 documents, comprising various notes and items of correspondence in relation to a complaint made about weeds growing on Mr Webster's land. However, when invited to comment on Mr Webster's application, the Ministers reconsidered the information. They indicated that they were now willing to disclose some of these items to Mr Webster (subject to the removal of personal data), and they subsequently did so. They also commented that they now considered some of the 103 documents previously supplied to fall outwith the scope of Mr Webster's request.
16. The Commissioner has not considered the information that was disclosed to Mr Webster in this decision.
17. Turning to the rest of the information, the Commissioner first considered each of the items that the Ministers considered to fall outside the scope of Mr Webster's request.
18. He accepts that documents 2, 3, 10a, 13, 19, 28, 43, 50, 61, 68, 93a, 97 and 98 fall outwith the scope of Mr Webster's information request, since they do not constitute correspondence on the matters specified in that request. As a result, he has not considered these documents any further in this decision.
19. However, having considered the content of documents 16, 26 and 81, the Commissioner finds that they do constitute correspondence on the matters specified in Mr Webster's information request, and so they do fall within the scope of that request.
20. The Ministers were invited to reconsider these documents during the investigation, and they responded by indicating that, if these documents were considered to fall within the scope of Mr Webster's information request, they would consider them excepted from disclosure under regulation 11(2) of the EIRs. These items have been considered on this basis in what follows.
21. The Ministers have applied the exception at regulation 11(2) to all of the withheld information (which falls within the scope of the request) and have additionally applied the exception at regulation 10(4)(d) to documents 17, 60, 72, 76, 85, and 96 and the exception at regulation 10(4)(e) to documents 56, 62 and 82.

FOISA or EIRs?

22. As noted above, the Ministers considered Mr Webster's information request in terms of the EIRs, having concluded that the information he had requested was environmental information, as defined regulation 2.
23. Mr Webster has argued that his request should not have been considered in terms of the EIRs, because he does not accept that his request seeks environmental information.



24. The Commissioner considered this point. He set out his thinking on the relationship between FOISA and the EIRs in some detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland*¹ and need not repeat it in full here. However, it is relevant to reiterate some of the key points which are relevant in this case:
- The definition of what constitutes environmental information should not be viewed narrowly, but in line with the definition of environmental information in the EIRs.
 - There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
 - Any request for environmental information therefore **must** be dealt with under the EIRs.
 - In responding to a request for environmental information under FOISA, an authority **may** claim the exemption in section 39(2).
25. The definition of environmental information is set out in regulation 2(1) of the EIRs, and parts (a), (b) and (c) of this definition are set out in full in the appendix to this decision. The Ministers have maintained that Mr Webster's information request relates to Scottish Government policies and procedures in relation to regulatory work under the Weeds Act 1959. As such, they stated that the information concerns a "measure" for the purposes of part (c) of the definition, which affects or is likely to affect the state of the 'elements' of the environment specified in part (a) of the definition, and the factors specified in part (b).
26. In his application to the Commissioner, Mr Webster stated that his request did not come under the EIRs. He stated that this was evident having regard to the Guidance for Scottish Public Authorities and Interested Parties on the implementation of the EIRs.²
27. The Commissioner is aware of this guidance, but he notes that it is not legally binding. Paragraph 8 of this Guidance states that the Guidance states that only the Scottish Information Commissioner and the courts can give an authoritative decision on the interpretation of the EIRs. As noted above, the test the Commissioner must consider when determining whether information is environmental information, is whether that information falls within any part of the definition contained within the EIRs themselves.
28. The subject matter of the information withheld from Mr Webster focuses on weed growth, and the handling of complaints on that subject. Having considered all of that information, the Commissioner's view is that all of this information is environmental information, as defined within paragraphs (a), (b) and (c) of regulation 2(1) of the EIRs. He is of the view that in each case the withheld information relates to (one or more of) the state of the elements of the environment (including land and soil); factors affecting these elements (particularly weed growth); or measures likely to affect those elements and factors (including legislation and associated regulatory activities).

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>

² <http://www.scotland.gov.uk/Resource/Doc/69582/0017416.pdf>



29. The Commissioner is therefore satisfied that the Ministers acted correctly by considering Mr Webster's information request in line with the EIRs.

Section 39(2) of FOISA - environmental information

30. The exemption in section 39(2) of FOISA provides that environmental information as defined by regulation 2(1) of the EIRs is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. This exemption is subject to the public interest test required by section 2(1)(b) of FOISA.
31. In this case, the Ministers have indicated that they wished to apply the exemption in section 39(2) of FOISA to the information withheld from Mr Webster.
32. Given that the Commissioner has found that this information is environmental information, he also finds that the Ministers were entitled to apply the exemption in section 39(2) to it.
33. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner also accepts that the public interest in maintaining this exemption and dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosure of the information under FOISA. The Commissioner has consequently proceeded to consider this case in what follows solely in terms of the EIRs.
34. The Commissioner will now go on to consider the Ministers' application of the exception at regulation 11(2) to all of the documents within the scope of the request.

Regulation 11(2) of the EIRs – third party personal information

35. The Ministers withheld the information requested by Mr Webster on the grounds that it was excepted from disclosure under regulation 11(2) of the EIRs. Regulation 11(2) excepts third party personal data from release if either "the first condition" (set out in regulation 11(3)) or "the second condition" (set out in regulation 11(4)) applies to the information.
36. As the Ministers' arguments relate to "the first condition" and, in particular, the parts of the first condition which consider whether disclosure of the information would breach the data protection principles (regulation 11(2) read in conjunction with either regulation 11(3)(a)(i) or (b)), this is what the Commissioner will focus on in this decision.
37. In order for a public authority to rely on this exception, 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.



Is the information under consideration personal data?

38. "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). In interpreting "personal data", the Commissioner has taken account of the opinions delivered by the House of Lords in *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47, by the High Court of England and Wales in *Department of Health v Information Commissioner* [2011] EWHC 1430 (Admin) and by the Court of Session in *Craigdale Housing Association and others v Scottish Information Commissioner* [2010] CSIH 43.
39. The Commissioner considers that the withheld information clearly relates to and identifies the person who made the complaint and he is therefore satisfied that all of the withheld information is the personal data of the complainant.
40. The Ministers argued that the disclosure of the information would breach the first data protection principle.

Would disclosure of the information breach the first data protection principle?

41. The first data protection principle states that the processing of personal data (here, processing being the disclosure of the data in response to a request made under the EIRs) must be fair and lawful and, in particular, that personal data shall not be processed unless at least one of the conditions in Schedule 2 (to the DPA) is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met.
42. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA, and does not consider any of the withheld information to be sensitive personal data.
43. 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.
44. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, he must then consider whether the disclosure of this personal data would be fair and lawful.

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

45. In their submissions, the Ministers considered that only condition 6 of Schedule 2 of the DPA could potentially be applicable in this instance.



46. The Commissioner has considered all of the conditions in Schedule 2 of the DPA, and is also of the view that condition 6(1) of Schedule 2 of the DPA is the only condition which might be considered potentially to apply in this case.
47. Condition 6(1) allows personal data to be processed if the processing is necessary for the purposes of legitimate interests pursued 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.
48. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
- Does the applicant (Mr Webster) have a legitimate interest in obtaining this personal data?
 - If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subject?
 - Even if the disclosure is necessary for the legitimate purposes of the applicant, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject? This will involve a balancing exercise between the legitimate interests of the applicant and those of the data subjects. Only if (or to the extent that) the legitimate interests of the applicant outweigh those of the data subject can the personal data be disclosed.

Does the applicant have a legitimate interest?

49. In correspondence with the Commissioner, Mr Webster explained that a number of complaints had been made to the Ministers regarding the growth of weeds on his land over a number of years. He commented that the RPID's response to these complaints had led to him feeling harassed, and had distracted him from reasonable enjoyment of his land. He stated that he felt he was entitled to be given access to all correspondence relating to these complaints so that he could fully assess the situation and determine if it was appropriate for him to take any steps to resolve the matter.
50. Having considered the submissions made by both Mr Webster and the Ministers, the Commissioner accepts that Mr Webster has a legitimate interest in gaining an insight into the complaints made in relation to his land, and the way in which these were handled by the RPID. The disclosure of the withheld information would shed light on how the Ministers dealt with a matter which was clearly of considerable concern to Mr Webster. It would allow him to form a view on the effectiveness of the process, and whether he had been fairly treated.

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

51. The Commissioner must now consider whether disclosure is necessary for Mr Webster's legitimate interests and in doing so he must consider whether these interests might reasonably be met by any alternative means.



52. The Commissioner has concluded that disclosure is necessary as there is no other way in which Mr Webster could pursue his legitimate interest while interfering less with the privacy of the data subject concerned.

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

53. The Commissioner must now consider whether disclosure would nevertheless cause unwarranted prejudice to the rights, freedoms and legitimate interests of the data subject concerned (the complainant). As noted above, this will involve a balancing exercise between the legitimate interests of Mr Webster and those of the data subject. Only if the legitimate interests of Mr Webster outweigh those of the data subject can the information be disclosed without breaching the first data protection principle.
54. The Commissioner has issued updated guidance on the interpretation of the exceptions in regulation 11³, and notes a number of factors which should be taken into account in carrying out this balancing exercise. These include:
- 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).
 - the potential harm or distress that may be caused by the disclosure.
 - whether the individual has objected to the disclosure
 - the reasonable expectations of the individuals as to whether the information would be disclosed.
55. With respect to the complainant's expectations, the Ministers explained that the RPID had telephoned the complainant to ask whether they would be willing for RPID to release copies of the correspondence in question. The complainant requested that they did not release the documents.
56. They submitted that the complainant would have a reasonable expectation of being able to engage with the complaints process of the RPID without the details of any such complaint being made public.
57. In addition, the Ministers argued that Mr Webster already knew the identity of the complainant and suggested that it was difficult to see what additional gain would be derived from disclosure of the complainant's correspondence.
58. Mr Webster submitted that he had a right to know the full facts of the case and that he felt full disclosure would enable him to put a stop to the matter and provide assurance that the RPID acted diligently in the future in such cases. He argued that other members of the public would benefit from the public accountability of the RPID.

³ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&SID=1333>



59. In reaching a conclusion, the Commissioner has taken account of the submissions made by both the Ministers and Mr Webster. With regard to the guidance mentioned at paragraph 54 above, he notes that the withheld information relates to the personal rather than public life of the complainant, and includes correspondence.
60. The Commissioner must also give of weight to the fact that the complainant has actively objected to the disclosure of the information and he accepts that the complainant would have a reasonable expectation, in the circumstances, that any complaints made to the RPID would not be made public. He accepts that disclosure might cause distress to the complainant.
61. Although he accepts that Mr Webster has a legitimate interest in accessing the information in question, the Commissioner notes that any information he orders to be disclosed under the EIRs must be disclosed into the public domain and not solely to Mr Webster. The Commissioner recognises in general that members of the public would expect correspondence of this nature to remain private, and would not expect it to be disclosed publicly in response to a request made in terms of the EIRs.
62. On balance, while the Commissioner accepts that disclosure of the withheld information would be necessary to fulfill Mr Webster's legitimate interests, he does not agree that this outweighs the unwarranted prejudice that would be caused to the complainant's rights, freedoms and legitimate interests. The Commissioner is therefore satisfied that condition 6 of Schedule 2 is not met in this case.
63. Having concluded that disclosure of the withheld information would lead to unwarranted prejudice, as described above, to the rights, freedoms and legitimate interests of the data subject, the Commissioner must also conclude that disclosure would be unfair. As condition 6 cannot be met, he would also regard disclosure as unlawful. In all the circumstances, therefore, he finds that disclosure would breach the first data protection principle and that the information was therefore properly withheld under regulation 11(2) of the EIRs.
64. In the light of his above conclusion, the Commissioner will not go on to consider the Ministers' application of the exceptions at regulations 10(4)(d) and (e).



DECISION

The Commissioner finds that, with respect to the matters considered in this decision, the Scottish Ministers (the Ministers) complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Webster.

The Commissioner has found that the Ministers acted correctly by considering Mr Webster's information request in terms of the EIRs, having identified that the information requested was environmental information as defined in the EIRs. As such, the exemption in section 39(2) of FOISA was applicable to that information, and there was no need for the Ministers to consider the request further in terms of FOISA.

The Commissioner finds that the Ministers were entitled to withhold the information considered in this decision in terms of regulation 11(2) of the EIRs on the basis that the information was the personal data of a third party, the disclosure of which would breach at least one of the data protection principles set out in the Data Protection Act 1998.

Appeal

Should either Mr Webster or the 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.

Margaret Keyse
Head of Enforcement
2 August 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 –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

39 Health, safety and the environment

...

- (2) Information is exempt information if a Scottish public authority-
- (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
 - (b) would be so obliged but for any exemption contained in the regulations.



The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on-

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

...

5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1)-

...

(b) is subject to regulations 6 to 12.

10 Exceptions from duty to make environmental information available

...

(3) Where the environmental information requested includes personal data, the authority shall not make those personal data available otherwise than in accordance with regulation 11.



11 Personal data

...

- (2) To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available.
 - (3) The first condition is-
 - (a) in a case where the information falls within paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 that making the information available otherwise than under these Regulations would contravene-
 - (i) any of the data protection principles;
- ...
- (b) in any other case, that making the information available otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

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.

...